

HB

36

HOUSE COMMITTEE REPORT

3-12-03

(7)
Date Referred to Committee: January 21, 2003

FURTHER REFERRALS: Judiciary

Date of Committee Action: March 10, 2003

The LABOR AND COMMERCE Committee considered:

HB 36

HOUSE BILL NO. 36

ELECTRONIC MAIL

"An Act relating to electronic mail activities and making certain electronic mail activities unfair methods of competition or unfair or deceptive acts or practices under the Act enumerating unfair trade practices and consumer protections."

Recommends it be replaced with [] HCS or [] CS for HB 36 (LSC)
For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ [] Same Title [] New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GGV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	<input checked="" type="checkbox"/>			
	GATTO	<input checked="" type="checkbox"/>			
	CRAWFORD	<input checked="" type="checkbox"/>			
	GUTTENBERG	<input checked="" type="checkbox"/>			
	DAHLSTROM	<input checked="" type="checkbox"/>			
Chair:	ANDERSON	<input checked="" type="checkbox"/>			
Chair:					

ALASKA STATE LEGISLATURE

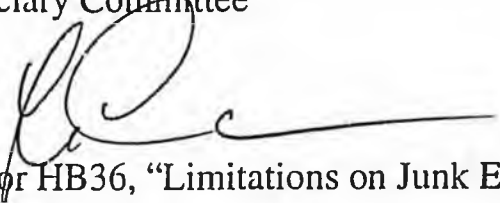


REPRESENTATIVE LES GARA

MEMORANDUM

DATE: March 18, 2003

TO: Rep. Lesil McGuire
Chair, House Judiciary Committee

FROM: Rep. Les Gara 

RE: Hearing Request for HB36, "Limitations on Junk E-mail (SPAM)"

Attached you will find a bill packet for HB 36. This includes the original bill, the House Labor & Commerce Committee Substitute, a sponsor's statement and sectional analysis, and several helpful articles of background information.

I respectfully request that HB 36 "Limitations on Junk E-mail (SPAM)" be scheduled for hearing in the House Judiciary Committee, at your earliest possible convenience. Please feel free to contact me with questions or thoughts at 465-2647.

Alaska State Legislature

House of Representatives

Alaska State Legislature, District 23
State Capitol Building, Room 422
Phone (907) 465-2647, Fax (907) 465-3518
E-mail: [Representative Les Gara@legis.state.ak.us](mailto:Representative_Les_Gara@legis.state.ak.us)
Official Business



State Capitol
Juneau, AK 99801-1182

Representative Les Gara

HB 36: "Limitations on Junk E-mail (SPAM)"

Sponsor Statement

This bill aims to help make the internet a benefit to the public, not a burden. A recent national study estimates that unwanted junk e-mail, "SPAM," costs Americans roughly \$8.9 billion in lost work time alone. (USA Today, January 3, 2003.) In addition, these unwanted bulk e-mails waste our scarce free time at home, and invade our privacy.

Currently 26 States limit SPAM. HB 36 is based in part upon "anti-SPAM" provisions from Washington and California, states whose laws have been upheld.. The bill follows the remedy structure that already exists under Alaska's consumer rights and fraud statute.

The bill does the following:

1. It affects only bulk commercial e-mail, and not personal or political messages.
2. It requires that these e-mails provide a recipient with an easy way to have their address removed from the sender's database.
3. It also penalizes the abusive practice of those businesses who, upon receiving an address-removal request, dishonor that request, or even sell the e-mail address for use on more SPAM.
4. It allows citizens or the Attorney General's office to enforce the law.
5. It bans the use of misleading subject headings, which many spammers use. For example, some spammers use headings to make a recipient think an e-mail is a message from a friend, when it is not.

Alaska is a place where the internet is especially important. The State has an obligation to protect the privacy of Alaskans who use the internet. This anti-SPAM bill aims to protect our privacy, and protect us from annoyance.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SECTIONAL ANALYSIS: CS for HB 36 (Labor and Commerce): Title: "Limitations on Junk E-mail (SPAM)"

This bill helps protect Alaskans from the annoyance of commercial junk e-mail, or "SPAM." It grants Alaskans the right to have their e-mail addresses removed from a sender's e-mail address list, and related protections. It applies to commercial e-mail sent by a business with which the recipient has no established business relationship. The bill does not govern e-mails sent by non-profit organizations, by people of businesses that the recipient has a relationship with, or that are political rather than commercial in nature.

The exemption of political speech seeks to avoid any concern that this statute regulates constitutionally protected free speech. Generally, a state can more easily regulate commercial speech than political speech. Additionally, there is no evidence that non-profit organizations are sending out invasive or annoying junk e-mail, and such organizations are therefore not regulated by this statute.

The bill provides as follows, by section:

Section 1:

AS 45.45.800 & .810. Requires that a person who sends SPAM e-mail must provide the recipient with a free phone number or link allowing the recipient to remove their address from the sender's e-mail list. This provision is modeled after California law.

AS 45.45.820. Requires that if a recipient of SPAM e-mail requests to be removed from a sender's e-mail list, that request must be honored. This provision seeks to remedy the practice of some companies that reportedly sell or otherwise spread the addresses of recipients who ask to have their names removed from an e-mail list.

AS 45.45.830. Requires that a person not violate the privacy protections they agree to when contracting with an internet service provider. This provision is modeled after California law

AS 45.45.840. Prevents the practice by some who send SPAM e-mail of using a false return address. It also prevents the practice by some who send SPAM e-mail of using a misleading subject heading to make a recipient think the e-mail has come from, for example, a friend when it really comes from a company selling a product. This section is modeled after a parallel Washington provision.

AS 45.45.850. Incorporates Alaska's existing remedies under our consumer protection law, the Alaska Unfair Trade Practices Act. These rules will apply to violations of this new law. The purpose is to use Alaska's existing remedy scheme, and not create a new one. This law allows the Attorney General's Office to represent a person on a claim under this statute. Since the Attorney General's Office does not have the staff to take many of these cases, it also allows individual citizens to pursue a case on their own behalf, for triple damages. Since true damages will be minimal, if anything, a citizen can instead request the option of a fine of \$500, plus the costs of bringing suit. Unless your computer is somehow damaged from receiving an infected SPAM e-mail, a court or jury would doubtfully find a person has suffered much in the way of damages, so it is most likely that these cases will result in \$500 fines, and not damages verdicts. The purposes of the fine will be to deter future improper conduct by the defendant.

AS 45.45.860. Allows recipients or employers of recipients, to file an action.

AS 45.45.870-.890. Makes this statute applicable to anyone who sends an e-mail that violates this section into the state, and limits the application to commercial e-mail, as opposed to political e-mail or e-mails from friends, acquaintances and non-profit organizations.

Sections 2, 4 & 5:

These sections provide that the bulk of this statute shall remain in effect in the event there is ever a successful constitutional challenge arguing that this state may not regulate non-Alaska e-mail. California does regulate out of state e-mail, and to date their law has been upheld. Section 1 borrows the California approach. Washington regulates out of state e-mail in a narrower fashion. Section 2 borrows the Washington approach, which would only go into effect in the unanticipated event a court were to say Alaska's broader regulation of out-of-state e-mail is unconstitutional. Sections 4 & 5 relate to Section 2.

Section 3:

States conduct that is improper under this statute constitutes an improper practice within Alaska's Unfair Trade Practices Act.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 36(L&C)
(H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to electronic mail activities . . . BRU Civil Division
unfair or deceptive acts or practices . . . Component Fair Business Practices
Sponsor Representative Gara
Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
HB 36 requires people who do business in Alaska and send unsolicited e-mail advertisements as part of their business to set up a toll-free telephone number or a valid e-mail address for recipients of the unsolicited e-mail to notify the business not to send any more, and include a notice of the number or e-mail address as the first text in each unsolicited e-mail advertisement. Each e-mail should also include specified characters in the subject line that identify the e-mail as an advertisement. The bill further prohibits the use of an e-mail service provider's equipment located in Alaska in violation of the providers' policy prohibiting or restricting the use of their equipment for unsolicited e-mail advertisements. Violations of the prohibitions in HB 36 are enforced by the unfair trade practices and consumer protection statutes, AS 45.50.471 - 561.

The Department of Law's Consumer Protection unit anticipates the increased enforcement workload from passage of this bill could be handled by existing staff.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 2/18/03 3:25 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/18/2003
Agency Department of Law



Honorable Tom Anderson, Chair
House Labor and Commerce Committee
Alaska Capital, Room 432
Juneau, AK 99801-1182

February 14, 2003

RE: HB 36 (Gara)-Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 36, authored by Representative Les Gara and co-sponsored by sixteen of your House colleagues, including your Committee members Vice-Chair Lynn, Crawford and Guttenberg.

As you can imagine, more and more older persons use the Internet each year. They use it for communications, learning, shopping, and entertainment. Retirees use the Internet to stay in touch with grandchildren as well as to communicate with each other. The AARP web site alone gets millions of "hits" each week. Every day AARP members are also victims of unwanted and uninvited "spam" that varies from commercial pitches to pornography. As Representative Gara points out in his Sponsor Statement, HB 36 is intended to protect our privacy and protect us from annoyance.


AARP could not agree more with the intent of this bill. Just as you and your Committee colleagues recently voted out a bill to curb unwanted telemarketing calls, we urge you to also vote "AYE" on HB 36 and give all Alaskans the opportunity to avoid this nuisance on the Internet.

We look forward to your support of HB 36 in the House Labor and Commerce Committee and we sincerely thank you in anticipation of that support.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
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Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

cc: Vice-Chair Bob Lynn
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg
Representative Les Gara
Marie Darlin
Patrick Luby

Subject: Ryan - testimony.HB.36.spam
Date: Thu, 6 Feb 2003 11:13:05 -0800
From: <akpirg@akpirg.org>
To: <ryan_peterson@legis.state.ak.us>



AKPIRG

Alaska Public Interest Research Group

PO Box 101093 ♦ Anchorage, Alaska 99510-1093 ♦ Ph: (907) 278-3661 ♦ Fax: (907) 278-9300 ♦ email: akpirg@akpirg.org

Testimony in Support of HB 36 - Limitations on Junk E-mail (SPAM)

AkPIRG wishes to voice its support for HB 36 (SB 34 companion), which seeks prudent and rational limits on junk e-mail. Junk e-mail, commonly known as "Spam" is a sad fact of daily life, particularly in Alaska where the internet is a key communication and learning tool for rural communities, in addition to emerging as another commercial link to the bush.

HB 36 will not affect personal messages, but will only affect bulk, commercial e-mail. This is the type of e-mail that wastes many minutes to hours each day, costing employers money or home users their valuable free time. HB 36 will require that e-mails provide a manner in which the recipient can have his or her address easily removed from the sender's database. Furthermore, it will prevent companies from selling e-mail addresses to other entities after a person has requested that his or her e-mail be removed.

The bill employs a remedy structure already extant under Alaska's consumer protection statutes.

HB 36 is one step toward making the internet work better for Alaskans and we urge you to support it.

Steve Cleary, AkPIRG

278-3661



February 5, 2003

Representative Les Gara
Alaska State Legislature
State Capitol, Room 422
Juneau, Alaska 99801-1182

Re: HB 36, Anti-SPAM Legislation

Dear Representative Gara:

GCI, the leading provider of Internet service in Alaska, supports proposed legislation to limit junk e-mail, or "SPAM."

We have reviewed a draft of HB 36. The legislation takes an appropriate approach to SPAM; rather than prohibiting commercial advertising by e-mail, it simply provides a convenient means for e-mail users to "opt-out" from receiving SPAM and levies penalties only when SPAM is sent to users who have opted out.

Some minor modifications to HB 36 may be necessary to clarify certain provisions. We believe those modifications can be adopted as the legislation winds its way through the process and, assuming that to be the case, we support the legislation.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy".

Jimmy Jackson
Regulatory Attorney

Subject: HB 36

Date: Thu, 23 Jan 2003 15:12:21 -0800

From: "Carey Graham, Jessica-ANC" <JGraham@perkinscoie.com>

To: "Representative_Les_Gara@legis.state.ak.us" <Representative_Les_Gara@legis.state.ak.us>

Dear Rep. Gara --

I am writing to you in my capacity as the Legislative Chair for the Anchorage Society of Human Resource Management (ASHRM), and as a "management-side" employment lawyer. I saw that your bill, HB 36, relating to e-mail "spam," was referred to the House Labor & Commerce Committee. As a result, I'm not sure if my comments are best directed to you or to the Labor and Commerce Committee Chair (Rep. Tom Anderson). Let me know if I need to re-send to Rep. Anderson.

In any event, I wanted to let you know that I discussed the bill with the ASHRM Board and we fully support your efforts. We think the bill would be improved by adding some additional language that clarifies that businesses have the right to prosecute claims for unwelcome spam. I recall that when we talked about this by phone you said this was your intent; in my opinion it is better to err on the side of clear instruction but I defer to your efforts.

Please let me know if we can do anything to support your work on HB 36. Thank you for taking the lead on this issue.

Sincerely,

Jessica Carey Graham

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LEGISLATIVE RESEARCH REPORT

DECEMBER 26, 2002



REPORT NUMBER 03.048

"ANTI-SPAM" LAWS IN CALIFORNIA AND WASHINGTON

PREPARED BY KATHLEEN L. WAKEFIELD, LEGISLATIVE ANALYST

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You asked for information on "anti-spam" laws in California and Washington. Specifically, you wished to know what information was used in designing these laws.

SUMMARY

As you know, both California and Washington have passed anti-spam laws. Washington lawmakers enacted legislation in March 1998, and amended the law in 1999. The resulting statute, RCW 19.190, prohibits sending commercial e-mail messages that use a third party's domain name without permission; that contain false routing information or no routing information; or that use false or misleading subject lines. The Washington law applies if the message is sent from within the state or is sent to a Washington resident, or if the owner of the domain name confirms that the recipient is a resident.

California lawmakers followed suit with two bills that were signed into law in September 1998. Section 17538.4 of the California Business and Professions Code requires that unsolicited commercial e-mail messages sent to California residents via a California Internet service provider must include "opt-out" instructions and valid contact information, and that such requests must be honored. In addition, e-mails from advertisers must begin the subject line of the e-mail with a label: "ADV" for general advertisements, or "ADV:ADLT" for subject matter that is suitable only for residents aged 18 and over. Section 17538.45 of the code prohibits the unauthorized use of electronic mail networks and provides civil penalties for those who violate the law.

In both states, lawmakers determined that a legislative solution was needed to solve the problem of junk e-mail or "spam," which can impose a significant burden on recipients, slow down or disrupt Internet service by overloading provider systems, and eventually result in increased costs to consumers.¹ California legislators modeled their anti-spam law on the state's existing "junk fax" law, which allows individuals to opt out of receiving unsolicited advertisements by facsimile.

UNSOLICITED COMMERCIAL E-MAIL, OR "SPAM"

Unsolicited commercial e-mail and bulk e-mail advertisements have come to be known in the popular lexicon as "spam." According to the *Intellectual Property & Technology Law Journal*, "spam is not a term of art and is not a defined term in any current legislation. The term 'spam' has come to mean any unwanted email regardless of the source or content."² According to the National Conference of State Legislatures, studies show that recipients of spam "overwhelmingly dislike it—a Gartner Group study found that 83 percent of those surveyed find it time-consuming, an invasion of privacy, or offensive."³ NCSL also found that the two most prevalent types of spam are "get-rich-quick" schemes and pornographic or adult-oriented material, which make up almost two-thirds of all unsolicited commercial e-mails.

Spam is an easy and inexpensive (for the sender) way to reach thousands of consumers. Opponents of spam, however, argue that it has significant costs for Internet service providers (ISPs), businesses, and individuals. For example, ISPs pay for additional bandwidth to accommodate space used by junk e-mail, businesses pay for filtering software, and recipients pay increased costs passed on by ISPs.⁴ NCSL found that, while legitimate businesses use e-mail responsibly to advertise goods and services, an increasing number of "spammers" use dubious marketing practices, such as:

- ◆ Using misleading subject lines;

¹ AB1676 Bill Analysis, California Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development, March 17, 1998; Washington Office of the Attorney General, <http://www.wa.gov/ago> (accessed December 19, 2002).

² Charles L. Philbrick and Matthew Z. Hammoudeh, "Lawmakers Search for Ingredients to Make Spam Less Appetizing," *Intellectual Property & Technology Law Journal*, October 2000.

³ Pam Greenberg, "The Problem of Spam: Unsolicited Commercial E-Mail," *Legisbrief*, National Conference of State Legislatures, October 2002.

⁴ *Legisbrief*, October 2002.

- ◆ Routing e-mail messages through third party computers or forging message headers to prevent identification;
- ◆ Using invalid return addresses or contact information; and
- ◆ Collecting, or "harvesting," masses of e-mail addresses from a variety of on-line sources such as chat rooms and listserves.

CALIFORNIA

California lawmakers passed AB1676 in August 1998. The bill, which was signed into law in September 1998, amended Section 17538.4 of the California Business and Professions Code to include prohibitions against unsolicited e-mail.⁵ The law, which originally applied only to unsolicited facsimile advertisements, now requires that unsolicited commercial e-mail messages sent to California residents via a California provider must include "opt-out" instructions and valid contact information, and that opt-out requests must be honored. In addition, e-mails from advertisers must begin the subject line of the e-mail with a label: "ADV" for general advertisements, or "ADV-ADLT" for subject matter that is suitable only for residents aged 18 and over.

The California legislature also passed AB1629 in 1998. This bill added §17538.45 to the law, prohibiting the unauthorized use of electronic mail networks and providing for civil penalties for those who violate these provisions.

Supporters of these bills explained that while California law provided some protections to consumers against unsolicited facsimile advertisements, telemarketing calls, and "junk mail," no protection was provided against unsolicited e-mail advertising or spam.⁶ In addition, federal law had not been updated to include spam, and voluntary standards were not effective in eliminating "spamming" by some Internet advertisers. Supporters concluded that action was needed at the state level to provide some protection until federal laws were revised. Those testifying in support of the anti-spam legislation included the Silicon Valley Software Industry Coalition, the Consumer Federation of California, and CalPIRG.

Opponents of the measures, however, argued that they were an infringement on free speech, and that they would also be in violation of the Commerce Clause of the U.S. Constitution. Opponents claimed that "any government regulation of the Internet may have a dampening effect on Internet commerce."⁷ Critics also questioned the measure's effectiveness against spam originating from outside the state. The California Internet Industry Alliance complained that

[B]ecause the Internet is used by companies and individuals throughout the world it is simply unworkable for the State of California to propose to require a California solution to labeling unsolicited electronic mail. The bill seeks to apply

⁵ We include a copy of this law as Attachment A, and California's "Unsolicited Commercial E-Mail Complaint Form" as Attachment B.

⁶ AB1676 Bill Analysis.

⁷ AB1676 Bill Analysis.

to everyone conducting business in California. There is no way for the sender of electronic mail in another state or country to know if the e-mail address is in California. Further, millions of non-English speaking senders and recipients would not understand the acronyms used.⁸

Other opponents of the legislation included the California Adult Webmasters Association and the Adult Entertainment Industry Education Fund.

WASHINGTON

Washington lawmakers passed ESHB2752 in March 1998 and 2SHB1037 in April 1999. The resulting statute, RCW 19.190, prohibits sending commercial e-mail messages that use a third party's domain name without permission; that contain false routing information or contain no routing information at all; or that use false or misleading subject lines.⁹ The Washington law applies if the message is sent from within the state or is sent to a Washington resident, or if the owner of the domain name confirms that the recipient is a resident. The law provides for the greater of \$500 or actual damages to recipients of illegally sent spam; the law also provides for the greater of \$1,000 or actual damages to interactive computer services harmed as a result of a violation of the law. Persons who unknowingly transmit such messages are exempt from liability. Also exempt are advertisements that are attached to messages sent through free electronic mail accounts as a condition of use for those accounts.

This new law, the Unsolicited Commercial Electronic Mail Act, is the nation's first anti-spam law. According to information published on the state Attorney General's website, the law was intended to address the following consumer issues:

First, recipients are the victims of a deceptive consumer practice because they pay for the Internet time and services that deliver the deceptive e-mail. Consumers waste their on-line time downloading deceptive mail, and false subject lines prevent them from making informed decisions on whether to delete messages. Recipients also are unable to determine accurate addresses in order to respond.

Second, persons whose addresses are misappropriated are harmed by receiving floods of responding e-mails nominally directed towards the original sender of the deceptive e-mail. The Legislature heard how a misappropriated e-mail return address shut down a legitimate electronic site due to persons responding by hitting "reply" and "send."

⁸ AB1676 Senate Floor Analysis, Senate Rules Committee, August 28, 1998.

⁹ We include a copy of this law as Attachment C, and Washington's "Junk E-Mail Complaint Form" as Attachment D.

Finally, the consumer's Internet Service Provider (ISP) is harmed because mass e-mailings clog systems and cause overloads, down time, and costs associated with filtering deceptive e-mails.¹⁰

Opponents of the Washington law raised many of the same concerns expressed by those opposing the California law: that such laws interfere with free speech and unrestrained commerce on the Internet; that small businesses would not be able to compete under such legislation; and that the bills would not be effective against out-of-state advertisers. Representatives of the American Electronic Association, the Direct Marketers Association, and the American Civil Liberties Union of Washington were among those who testified against the anti-spam law.

Proponents of the legislation, however, argued that junk e-mail is becoming ever more invasive, that the cost of junk e-mail is born by ISPs and consumers, and that some reasonable restrictions on such advertising are needed. As noted on the Consumer Protection Division page of the Washington Attorney General website, such advertisements are "most often used for multi-level marketing schemes, get-rich-quick schemes, work-at-home schemes or for questionable products or pornography."¹¹ The Attorney General's Office received more protests against spam than any other type of consumer complaint.

In addition to the Attorney General's Office, representatives of the Washington Association of Internet Service Providers and the Washington State Internet Lobby testified in favor of the anti-spam measures.

OTHER STATES

As of August 2002, 26 states have enacted "anti-spam" laws for electronic mail.¹² These laws tend to fall into two major categories:

- ◆ Laws using general language to prohibit misleading information in the message header, such as questionable subject lines (as in the Washington statute); or
- ◆ Laws that prohibit the use of fake sender addresses, and that also require the sender to use a label such as "ADV:" or "ADV:ADLT" (for adult material)

¹⁰ "Background Paper on Washington Supreme Court Case: Challenging Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/ago/releases/rel_spam_060701.html (accessed December 23, 2002).

¹¹ Washington Consumer Protection Division, Office of the Attorney General, <http://www.wa.gov/ago/clearinghouse/consumer/junkemail/home.html>.

¹² The following states have enacted anti-spam laws: Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. We have included a copy of "State Laws relating to Unsolicited Commercial or Bulk E-Mail (SPAM)" from the National Conference of State Legislatures as Attachment E.

to clearly mark the message as an advertisement (such as the California law).¹³

Most state anti-spam laws also require marketers to provide a valid and easy way for recipients to opt out of receiving their e-mails, and to honor those requests. Many of the laws also strengthen ISP user agreements that prohibit or limit the use of their networks to send bulk or commercial e-mail. In addition, the governor of California recently signed a bill adding a section to the state statutes prohibiting marketers from sending spam to cellular phones or pagers using text messaging capabilities (California Business and Professions Code, Section 17538.41).

Among those who favor anti-spam laws, at both the state and the national level, are the Internet Alliance (an industry trade association), the Coalition Against Unsolicited Commercial Email (CAUCE), and Junkbusters. Opponents of anti-spam laws include the Direct Marketing Association and the Cato Institute, a libertarian policy institute and "think tank."

Congress has also attempted to address the issue of junk e-mail, although at this time no measures have passed or been enacted into law. According to the National Conference of State Legislatures, lawmakers introduced at least eight bills targeting junk e-mail in the 107th Congress.¹⁴ Among those were bills similar to state laws prohibiting false headers, deceptive subject lines, and invalid opt-out information, and requiring labeling of bulk e-mail advertisements. At this time, we know of no anti-spam bills that have been pre-filed for the 108th Congress.

COURT CHALLENGES

Both the California and the Washington anti-spam laws have faced court challenges. In October 1998, the Washington Attorney General's Office filed suit against an Oregon company and its owner/operator, alleging that the company used misleading subject lines and an invalid return e-mail address in unsolicited commercial e-mails sent to millions of internet users (*State v. Heckel (Jason) d/b/a Natural Instincts*). In March 2000, King County Superior Court Judge Palmer Robinson dismissed the suit, stating that Washington's anti-spam law violated the Commerce Clause of the U.S. Constitution by placing an undue burden on interstate commerce.¹⁵

The Attorney General's Office appealed the ruling directly to the Washington State Supreme Court, which, in June 2001, unanimously upheld the constitutionality of the anti-spam law. In reversing the lower court's decision, the Supreme Court concluded that "...the Act's local benefits outweigh any conceivable burdens the act places on those sending commercial e-mail messages."¹⁶ The court stated that "...the only burden the Act places on spammers is the requirement of truthfulness, a requirement that does not burden commerce at all but actually

¹³ Douglas J. Wood, "The Impact of State Anti-Spam Laws," *GigaLaw.com*, available at <http://www.gigalaw.com/articles/2002-all/wood-2002-03-all.html> (accessed December 18, 2002).

¹⁴ *Legisbrief*, October 2002.

¹⁵ "State Supreme Court Upholds Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/ago/release/ss/rel_spam_060701.html (accessed December 23, 2002).

¹⁶ Pam Greenberg, "State Supreme Court Upholds Washington Anti-Spam Law," *News From the States*, National Conference of State Legislatures, Summer 2001, <http://www.ncsl.org/programs/lis/CIP/CIPCOMM/news0801.htm> (accessed December 18, 2002).

facilitates it by limiting fraud and deception."¹⁷ The defendant subsequently appealed this decision to the U.S. Supreme Court, which, in October of this year, declined to hear the appeal.¹⁸

Last year, the California Attorney General's Office filed an *amicus* brief in a case brought against spammers by private individuals. In that case (*Ferguson v. Friendfinders, Inc.*), the First District Court of Appeals in San Francisco upheld the state's anti-spam law. In a unanimous decision, the court found that the law did not violate the Commerce Clause of the U.S. Constitution, because "it does not directly regulate commerce occurring wholly outside the state."¹⁹ The defendants appealed the decision to the California Supreme Court, but the court declined to hear the appeal.²⁰

However, these decisions do not set precedent for other jurisdictions, and experts anticipate further challenges in other states based on similar concerns about violations of the Commerce Clause of the U.S. Constitution and violations of free speech rights.²¹

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹⁷ "State Supreme Court Upholds Washington's Anti-Spam Law," Washington State Attorney General's Office, http://www.wa.gov/ago/releases/rel_spam_060701.html (accessed December 23, 2002).

¹⁸ Pam Greenberg, "Court Decisions Favor State Anti-Spam Laws," *News From the States*, National Conference of State Legislatures, Winter 2002, <http://www.ncsl.org/programs/lis/CIP/CIPCOMM/news0202.htm> (accessed December 18, 2002).

¹⁹ Pam Greenberg, "Court Decisions Favor State Anti-Spam Laws."

²⁰ In September 2002, the California Attorney General filed suit against a California company, PW Marketing LLC, and its two owners/operators, alleging that they sent millions of unsolicited commercial e-mails promoting their products, using false addresses and failing to disclose required information (such as valid contact numbers or e-mail addresses that recipients can contact to opt out of future e-mails). This is the first lawsuit the state has brought against violators of the anti-spam law. "Attorney General Files State's First 'spam' Lawsuit," Office of the Attorney General, State of California, <http://caag.state.ca.us/newsalerts/2002/02-111.htm> (accessed December 23, 2002).

²¹ As a point of interest, the *New York Times* recently reported that the Bush administration, as part of its homeland security strategy, is planning to require Internet service providers' help in building a centralized system that would enable broad monitoring of the Internet, and would potentially allow surveillance of Internet users, by a government-led monitoring center. According to the report, some officials of Internet companies worry that such a system may "cross the indistinct border between broad monitoring and wiretap," and "could be used to violate privacy." John Markoff and John Schwartz, "Bush Administration to Propose System for Monitoring Internet," *The New York Times*, web posted December 20, 2002.

Attachment A

California Business & Professions Code §§ 17538.4 to .45

California Business + Professions Code

~~(d) To any telecommunications goods and services sold by a telecommunications company, except those telecommunications goods and services purchased for use primarily for personal, family, or household purposes.~~

~~(e) To financial services offered in the ordinary course of business by a supervised bank, national banking association, bank holding company, a state or federal savings and loan association, a state or federal credit union, or a subsidiary or affiliate thereof, or an authorized industrial loan company, a licensed personal property broker, a licensed consumer finance lender, a licensed commercial finance lender, or a person licensed pursuant to Division 4 (commencing with Section 10000).~~

~~(f) To any delay in delivery of goods or services caused by the United States Post Office, an act of God, or a labor strike by the vendor's employees.~~

*Delete
fax*

17538.4. (a) No person or entity conducting business in this state shall facsimile (fax) or cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless:

(1) In the case of a fax, that person or entity establishes a toll-free telephone number that a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents.

(2) In the case of e-mail, that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(b) All unsolicited faxed or e-mailed documents subject to this section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number, or numbers, or e-mail address, or addresses, specified by the recipient.

In the case of faxed material, the statement shall be in at least nine-point type. In the case of e-mail, the statement shall be the first text in the body of the message and shall be of the same size as the majority of the text of the message.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed or e-mailed documents, no person or entity conducting business in this state shall fax or cause to be faxed or e-mail or cause to be e-mailed any unsolicited documents to that recipient.

(d) In the case of e-mail, this section shall apply when the unsolicited e-mailed documents are delivered to a California resident via an electronic mail service provider's service or equipment located in this state. For these purposes "electronic mail service provider" means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(e) As used in this section, "unsolicited e-mailed documents"

means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

(1) The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(2) The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this section, "fax" or "cause to be faxed" or "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include "ADV:" as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include "ADV:ADLT" as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

* 17538.45. (a) For purposes of this section, the following words have the following meanings:

(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) "Initiation" of an unsolicited electronic mail advertisement

refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars (\$50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars (\$25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support such a finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied

via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) A violation of this section shall not be subject to Section 17534.

17538.5. (a) It is unlawful in the sale or offering for sale of consumer goods or services for any person conducting, any business in this state which utilizes a post office box address, a private mailbox receiving service, or a street address representing a site used for the receipt or delivery of mail or as a telephone answering service, to fail to disclose the legal name under which business is done and, except as provided in paragraph (2) of subdivision (b), the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(b) (1) This section shall not apply to a person who sells the preponderance of goods and services at retail from trade premises which are open to the public regularly during normal business hours where the post office box or telephone answering service is supportive of and ancillary to the sales made or to any person who provides services pursuant to a license issued pursuant to this code or any other provision of law by a state board or agency or, except for a person conducting a mail order or catalog business, by a city or county or city and county in this state, which has the person's current business street address or home address on record and which is authorized to reveal that address to inquiring persons.

(2) If a person conducts a business described in subdivision (a) from that person's residence, the person is not required to disclose the residence address if both of the following conditions are satisfied:

(A) The person's current business street address or home address is contained in a United States Postal Service (USPS) Form 1583 that is filed with the USPS.

(B) The person has signed an acknowledgement form substantially in accordance with the provisions set forth in subdivision (f) which, among other things, authorizes the commercial mail receiving agency to act as that person's agent for service of process.

(c) A commercial mail receiving agency (CMRA) shall not provide private mailbox receiving service to any customer until it obtains from that customer at least two pieces of identification regarding that customer and provides to that customer an acknowledgment, as set forth in subdivision (f), which (1) acknowledges the obligation to advise the CMRA of any change in address, (2) authorizes the CMRA to act as an agent for service of process, and (3) acknowledges the requirements of Sections 17200 and 17500, which prohibit unfair competition and false advertising. The commercial mail receiving agency shall thereafter maintain a copy of any United States Postal Service Form 1583 for each mailbox service customer, along with a copy of each of the two pieces of identification used by the customer, for a period of two years after the termination of service to that customer. Upon the request of the Department of Consumer Affairs or any law enforcement agency conducting an investigation, the commercial mail receiving agency shall make available to the Department of Consumer Affairs or that law enforcement agency, for

**Chapter 19.190 RCW
COMMERCIAL ELECTRONIC MAIL**

SECTIONS

19.190.010 Definitions.

19.190.020 Unpermitted or misleading electronic mail -- Prohibition.

19.190.030 Unpermitted or misleading electronic mail -- Violation of consumer protection act.

19.190.040 Violations -- Damages.

19.190.050 Blocking of commercial electronic mail by interactive computer service -- Immunity from liability.

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 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 practice that violates the consumer protection act.

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

(4) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service 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.

(5) "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.

(6) "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.

(7) "Person" means a person, corporation, partnership, or association.

[1999 c 289 § 1; 1998 c 149 § 2.]

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 § 2; 1998 c 149 § 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 § 3; 1998 c 149 § 4.]

RCW 19.190.040**Violations -- Damages.**

(1) Damages to the recipient of a commercial electronic mail 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.

[1998 c 149 § 5.]

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 § 6.]

Anchorage Daily News

Friday, December 27, 2002

ALASKA'S NEWSPAPER

Internet drowning in spam

■ **JUNK E-MAIL:** Deluge may keep people away from cyberspace, experts worry.

By **FRANK JAMES**
Chicago Tribune

WASHINGTON — A rising flood of irritating junk electronic mail touting everything from get-rich-quick schemes to raunchy pornography, ink-jet cartridges and weight-loss drugs threatens to keep the Internet from reaching its full potential as a method of communication, experts say.

The deluge of unsolicited commercial e-mail, or spam, is clogging the electronic infrastructure and increasing the hassle factor of using e-mail.

"In September of 2001, we measured that 8 percent of all Internet e-mail was spam," said Linda Smith Munyan, a spokeswoman for Brightmail Inc., which provides companies

ANCHORAGE COUPLE ARE SHIPPING OUT AGAIN



Father son fo holidays car th

■ **ONE ARRESTED:** Victim suspect, but a second esc

By **PETER PORCO**
Anchorage Daily News

Jace Bohn spent an angry guy had made off with the fam that morning — brazenly snatch his Mountain View driveway.

Yet police, in the view of the nothing about it even though a the incident.

"I got mad at them for not said, explaining why he urged themselves.

A few hours later, Jace and Gary Bohn, had recovered the E way. In the process, they kicke young men found sitting inside

mail Inc., which provides companies with spam-blocking software. "For this year, it was 40 percent."

Technological and legal efforts to stop spammers have largely resulted in what's being called an Internet arms race that finds the junk e-mailers quickly adapting to overcome actions meant to thwart them.

"E-mail has become really a fundamental communications tool for many of us — in business, our social lives, in political activism, all facets of American society and other societies around the world," said John Mozena, spokesman for the Coalition Against Unsolicited Commercial Email, an organization devoted to stemming the tide of electronic junk mail.

However, he said, the volume of spam may push some people away from using e-mail.

"People don't see enough of a value ... to get around the downside of having to deal with all the spam, some of which is disturbing for some folks to look at," he said. "We're approaching a time when people are going to stop using e-mail."

David Sorkin, an associate professor of law at John Marshall Law School in Chicago and a cyberlaw expert, said such a scenario is not far-fetched. During a recent visit to Japan he saw a glimpse of what could happen.

Ninety percent of the text messages the Japanese receive on their cell phones are spam for dating services, Sorkin said.

"People there are stopping their use of cell phones entirely because of it, and I don't think we're that far off from a situation like that with e-mail where people just give up. I think it would be a real shame."

John Easton, a Chicago public affairs professional, said he hardly uses an America Online account at

See Back Page, SPAM



MARC LESTER / The Associated Press

Fred Adkerson and his wife, Wiggles, will soon embark on their 80th cruise ship vacation. Fred and Wiggles, known for a contortionist act she performed for 40 years in nightclubs and carnivals, took their first cruise together in 1972 on the original Love Boat.

Cruisin' at 80

Fred and Wiggles have a bent for the sea

By SHELLA TOOMEY
Anchorage Daily News

Miss Wiggles, who turned 80 in October, is all booked up for her 80th cruise with Fred the bail bondsman, who is also her husband. The harmonic convergence of 80 years and 80 voyages is worth mentioning but, let's face it, if you're in good health and take three cruises a year, it was bound to happen.

Wiggles — she rarely uses her birth name, Velma — still hasn't decided if she'll perform her contortionist act for shipmates on this trip as she usually

does. It isn't that the lady can't twist and stretch like she did for 40 years in nightclubs and carnivals all over the world. Even at 80, she can sit on her living room carpet, spread her legs in a near split and touch her muscled stomach to the floor in front of her.

She can stand on her head on a chair in the middle of a stage, back to the audience, and flex her butt muscles until they undulate like a tsunami sea. She has performed on cruises with celebrities like Red Buttons and Tempest

See Back Page, 80TH CRUISE



Tales
of the City

A POWERBALL CHRISTMAS

Jackpot winner plans good works with \$314.9 million

Powerball jackpot winner Andrew "Jack" Whittaker Jr., left, listens as his granddaughter Brandi Bragg addresses the media at West Virginia Lottery headquarters. West Virginia



Contractor's \$100 in tickets pays off with

By GAVIN McCORMICK
The Associated Press

CHARLESTON, W.Va. — A 55-year-old contractor won the \$314.9 million Christmas Day jackpot, the biggest undivided lottery prize in history, and said the first thing he will do is turn over 10 percent to his church.

"I just want to thank God for letting me pick the right numbers — or letting the machine pick the right numbers," said Powerball winner Andrew "Jack" Whittaker Jr.

million first installment prize.

He said he plans to expand his family, maybe buy a helicopter.

"The very first thing I want to do is turn over 10 percent of the prize to my church," Whittaker said.

Whittaker, who works at Scott Depot, a steel mill in Charleston, and is

...the Escort and drove onto the
; it off.
when I made the first eye contact

...truck behind the Escort, blocking it in with the
driver's side.
The Escort driver backed up, smashing the

...backing up with the Escort.
"I didn't want to hurt nobody," he said. "I just
wanted my car back."

SPAM: Junk e-mail smothering users

Continued from A-1

home because "it's entirely filled with spam."
"It's stuff that would be scary to open," Easton said.
"Clearly, the bulk of it is from people I did not want to
hear from and hope never to meet."

As companies and home-computer users have
fought back by using filters to try to screen out junk e-
mails, spammers have gotten bolder, especially with
pornography. Where once an e-mail reader had to af-
firmatively click on a link to see pornographic images,
spammers now embed such photos in the e-mail,
shocking many, including children, who have e-mail
accounts.

That has also alarmed corporate lawyers and
human-resource officials nationwide, said Maurene
Caplan Grey of Gartner, a provider of technology-re-
lated research and consulting in Stamford, Conn. She
said senior executives worry that some employees
may feel so disgusted and even traumatized by porno-
graphic spam that they will accuse their companies of
failing to do enough to protect them from a hostile
work environment.

"I've heard organizations ask me this: Who is to
say one of the employees won't file a lawsuit saying
'You should have done something. You knew what
was going on.' It's a very difficult problem," she said.

Spam is also placing an increasing strain on corpo-
rate computers and is taking a toll on worker pro-
ductivity as employees must take time to plow
through and delete unwanted e-mails.

AOL, the nation's largest Internet service
provider, and other such companies have aggressive-
ly turned to anti-spam technology for help, as well as
to the courts.

In December, AOL won \$7 million in damages in
U.S. District Court in Alexandria, Va., against what
the company called a "spam ring." AOL said its inves-
tigation determined that about 25 percent of the junk
e-mails received by its members came from "parties
associated with CN Productions," a major junk e-mail
operation, said Nicholas Graham, an AOL
spokesman.

To win the case, originally filed in a Virginia state
court, the company argued that the spammers violat-
ed its private property rights by using AOL's servers to
send billions of unsolicited e-mails to its members.

AOL, like other Internet service providers, has al-
so resorted to ever stronger technological filters to
block spam from reaching its members. In the latest
version of its software, the company has included an
on-screen button to allow its 27 million U.S. members
to immediately report spammers to AOL so they can
be added to the blacklist for blocking. Microsoft's
MSN Internet service has built-in spam-filtering fea-
tures for the newest version of MSN software.

Brightmail and other technology companies use
sophisticated algorithms to spot e-mail with spam
characteristics and block them. Companies that han-
dle e-mail also trade blacklists of known spam ad-
dresses.

But spammers have developed countermeasures.
They will sometimes use a nonsensical series of num-
bers or misspell words to throw off the anti-spam



BOB BIRD / The Associated Press

...ewell, are introduced by West Virginia Gov. Bob Wise at a Thursday press conference.

Turns \$100 into \$314.9 million

...o to go there. It's where Jesus
...Whittaker said.

...also said he wants to help "peo-
...better themselves to have a bet-

...g really excited because of the
...can do with this money," he said.
...le about buying luxuries for him-
...m a helicopter he said he had
...for a while.

...i people laid off right now at
...d I want more work so I can put
...work," he said. He said he cur-
...s 117 people.

...was not a regular lottery player
...00 in tickets because the jackpot
...was purchased at the C&L Su-

...per Serve in Hurricane, a town of 5,200 people
...25 miles west of Charleston.

...Whittaker went back to the store Thursday
...morning to fill up on gas and buy some bis-
...cuits, as he does each day. The clerk was the
...one who sold him the ticket. He told her he
...won, but "she said, 'No you didn't, you're not
...excited enough to win the lottery.' And she
...just pushed me out the door," he said.

... "It's so just that the poorest state in Ameri-
...can wins the biggest Powerball in history,"
...said Bob O'Dell of Hurricane.

...West Virginia's per capita income actually
...was second-lowest to Mississippi's in 2000.

...The jackpot was the largest ever for a sin-
...gle winning ticket, West Virginia lottery
...spokeswoman Nancy Bulla said. It also was
...the fifth-largest jackpot in U.S. history.

Wiggles are sailing again

...es can make friends
...with anyone.

...air between two mountains in South America.
...The repairman had to get cranked out on the
...other car, then climb into theirs to fix it.

...Fred said the tram company promised to
...erect a sign warning future tourists: "Don't
...take this ride if you have a weak heart."

...These days cruise ships are 16 stories high
...and carry 2,000 people, Fred said. And every-

es can make friends
with anyone.

Adkerson

made clothes for others. She
ual fashion shows.

and Wiggles started serious
hips were smaller, 600 to 800
nd less luxurious. But there
ortunities for adventure. Port
ren't as slick and packaged as

ia, they once rode army trucks
he jungle to see bull racing. The
running stamina from two
and a dozen eggs a day, Fred
gers didn't seem to be looking
t they really coveted that red
es' lips. Back home, she sent
f lipstick.

to China in 1982, to places
als had never seen a non-Chi-
struck by her unusual appear-
asked Wiggles to bless their ba-
routinely the only black person
and says she loved being con-

love the extra-thorough search-
guards suspicious of her color or
maybe just her self-assurance
let it in a trip.
an m friends with anyone."

en in ships that had holes in
t bumped into a load of boat peo-
pt going. They've said no to scam
o sell them museum artifacts in-
ched as other tourists who said
red." They've docked at ports
all of horse manure was so pun-
gles didn't want to get off the boat.
were on a tram that got stuck,
dangling thousands of feet in the

The repairman had to get cranked out on the
other car, then climb into theirs to fix it.

Fred said the tram company promised to
erect a sign warning future tourists: "Don't
take this ride if you have a weak heart."

These days cruise ships are 16 stories high
and carry 3,000 people, Fred said. And experi-
enced cruisers know the real danger is get-
ting assigned to a table with boring or un-
pleasant dinner partners.

Fred seems to take catastrophe in stride.
Of course, he has a good survival record. He's
the only Anchorage bail bondsman to last this
long without getting murdered by his clients.
He started his bail business in 1968 and has
long been a familiar fixture in the northwest-
corner of town, where the courts and the
lawyers do business. He wears gold and dia-
mond jewelry and until recently drove only
big Cadillacs and Lincolns. He rode out the
1964 earthquake by clinging to the fins of the
Caddy he owned at the time.

Fred says the thing he likes most about
cruises is only having to unpack and repack
once. A ship is a 24-hour-a-day resort, with
lots of shore excursions for variety. Escape
and relaxation are his goals. He doesn't take
a cell phone on vacation and claims to never
have called home from a cruise.

"Why would I want to know we just had a
\$50,000 forfeiture?" he said.

Fred and Wiggles' 80th cruise, set for
February, is really two consecutive seven-day
trips on two different ships, one to the western
Caribbean and one to the eastern Caribbean.
Right now, the Adkersons are sticking rela-
tively close to the United States because of
terrorism worries. Of course, they've heard
about the flu problems, but they won't be
frightened into staying home. No way.

And the truth is, Wiggles will almost cer-
tainly relent and do her contritionist act on
talent night, Fred said. She's spent her life in
show business, and she just can't say no to
fans.

Reporter Sheila Toomey can be reached at
stoomey@adn.com or 257-4341.

sophisticated algorithms to spot e-mail with spam
characteristics and block them. Companies that han-
dle e-mail also trade blacklists of known spam ad-
dresses.

But spammers have developed countermeasures.
They will sometimes use a nonsensical series of num-
bers or misspell words to throw off the anti-spam
screening software. When screening software is look-
ing for a particular type of spam from the United
States, the junk e-mailers may route their messages
through an overseas server to defeat the screening.

Service providers have lobbied Congress and the
states to enact stronger laws to fight spam. While bills
introduced in Congress have not become law, 26
states have anti-spam laws, said Sorkin, the John
Marshall professor.

Although most e-mail users resent receiving spam,
getting laws passed hasn't been easy.

"It's partly been because of concerns about com-
mercial free speech," Sorkin said. "But it's also been
the power of the marketing lobby." Large, legitimat
companies that use e-mail have been afraid that any
ban on spam could also prevent them from using e-
mail for marketing purposes.

Despite laws and technology, however, experts say
spam is unlikely to go away and in some ways is more
pernicious than viruses. Virus creators generally
don't make any money, doing their misdeeds for the
challenge or thrill. But there are real financial incen-
tives for spammers.

It costs a fraction of a penny to send one e-mail —
much less than the costs of telemarketing and tradi-
tional direct mail — because thousands or even mil-
lions of messages can be sent at the push of a button.
And a response rate far less than the 2 percent target
of many direct-mail campaigns can earn a decent liv-
ing for a spammer, sometimes into six figures.

Nevertheless, e-mail providers are determined to
fight the rising spam tide.

"Spamming is the cyber-version of 'Whack a Mole,'
" Graham of AOL said, referring to the old carnival
game consisting of mechanical moles that players try
to hit on the heads with mallets, only to see them pop
up elsewhere. "But we're whacking the mole with ev-
erything we've got."



Study: Spam costs businesses \$13 billion

NEW YORK (AP) — All those junk e-mail messages may promise instant wealth, but they can be quite painful to the bottom line.

A study to be released this week attempts to quantify the annual cost of spam: \$8.9 billion for U.S. corporations, \$2.5 billion for European businesses and another \$500 million for U.S. and European service providers.

Marten Nelson, an analyst at Ferris Research, says that while most spam can be deleted in one second, occasionally someone is duped into clicking the message. It also takes time to track down legitimate messages mistakenly tossed by inaccurate spam filters.

Breaking down the costs

Figuring it takes 4.4 seconds on average to deal with a message, the messages add up to \$4 billion in lost productivity for U.S. businesses each year.

Another \$3.7 billion comes from companies having to buy more powerful servers and more bandwidth as well as divert staff time. The rest is attributable to companies providing help-desk support to annoyed users.

The costs are less in Europe because spam isn't as big of a problem, Nelson said. But in future calculations, Nelson said he may have to add the costs of wireless spam, a growing problem in Europe as text messaging gets more popular.

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Find this article at:

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Study: Spam costs U.S. corporations \$8.9B per year

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Find this article at:

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Editorial Desk | September 13, 2002, Friday
Taking On Junk E-Mail

(NYT) 632 words
Late Edition - Final , Section A , Page 26 , Column 1

ABSTRACT - Editorial on scourge of e-mail spam, which some experts fear could so swamp systems that e-mail will become virtually unusable. It will come as no surprise to anyone with an e-mail account that the scourge of spam has reached near-intolerable levels. One new study estimates that this year 7.3 billion e-mail messages will be sent each day, and spam -- bulk, commercial e-mail -- will make up nearly one-third of it. Increasingly, opponents of spam are using federal and state law to fight back. This growing movement is worthwhile, and deserves support from Congress, federal agencies, state legislatures and the courts.

Spam is popular with direct marketers for obvious reasons. Junk mail requires U.S. postage, but junk e-mail can be sent almost without cost. Computer time is cheap, and CD's containing millions of e-mail addresses sell online for about \$150. For recipients, however, spam is far from free. Businesses report that unwanted e-mail is significantly reducing worker productivity and overloading computer-system capacity. Individuals are spending countless hours, both at the office and at home, sifting through their e-mail queues to weed out spam. Since this is an imperfect science, e-mail users often lose important, non-junk e-mail in the process.

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News from TRAC

NEW YORK TIMES ENDORSES ANTI-SPAM EFFORT

Washington, DC, September 13, 2002 – *The New York Times* today published an editorial strongly supporting TRAC's, and other, efforts to reduce spam.

The Times commented on the TRAC position as follows:

This month the Telecommunications Research and Action Center and other consumer groups petitioned the Federal Trade Commission to prohibit e-mail that disguises its commercial intent by using a phony subject line or by misrepresenting the sender. They are also asking the agency to require spammers to offer recipients a way to "unsubscribe" – to get themselves removed from a spammers' list - and to make it illegal to ignore such requests. These proposed rules fall squarely within the F.T.C.'s mandate and deserve prompt action.

The full editorial can be viewed at <http://www.nytimes.com>.

TRAC urges all consumers to support its petition by going to <http://www.banthespam.org> and enlist in the battle against spam. Give us your stories on how you have been harmed by spam. We want to know in particular whether:

1. You had to spend more money on e-mail because of spam.
2. You had to create a new e-mail address or multiple addresses to avoid spam.
3. You had to cancel an account or open a new one because of the amount of spam.
4. You lost desired e-mail because of deleting spam.
5. You suffered adverse employment consequences because of spam on your machine.
6. You had any other loss, embarrassment or incident related to spam.

With your permission, TRAC will bring these examples to the Federal Trade Commission to help document the damages being suffered by consumers from unwanted commercial e-mail.

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Should I hit "remove"?

A lot of the spam that we get and that people write to us about comes with instructions on how to "remove yourself from our list". Yet, more often than not, the remove instructions don't work. Why is this?

Basically, you've just experienced what many call "rule #1": Spammers lie.

Remove lists don't work. Even the United States government has noticed this: "We are also working on (spam) cases that involve claims that you can opt out, when in fact what clicking on the link to unsubscribe will do is simply verify that you have a valid e-mail address, so that you can then get lots of spam instead of a little," said Howard Beales, director of the FTC's Bureau of Consumer Protection. In [this story](#), Computerworld of New Zealand documents an experiment in which they demonstrate that remove lists really don't work.

Don't waste your time trying to jump through the spammers' hoops. Plenty of people have documented the fact that not only do remove lists not work, they do exactly what Mr. Beales says: they verify to the spammer that your e-mail address is good, and so then they put it on the premium CD and sell it to the next spammer for even more money.

In one case, an anti-spammer went to a remove-list web site and noticed that he'd been removed from the list, supposedly, even though he hadn't given them his address. So, he went into debugging mode, using telnet to access the raw HTML of the server directly, and discovered that it just gave you the same answer no matter what. In other words, the whole thing was a complete and utter fraud. Some spammers put more effort into their fakery, but in the end it comes down to the same thing: it does you no good to follow the removal instructions.

Scott Hazen Mueller / [E-mail me](#)



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About this site

Our aim with spam.abuse.net is to provide the best collection of anti-spam links and resources to be found anywhere on the Internet. If you know of a page or site or story that would be of interest to the anti-spam community, don't hesitate to bring it to our attention. We also gladly accept new writeups, images and icons from the original creator(s) or with their permission.

Who are we? We're Internetters with a collective century-plus of experience in the online world. Our cast includes

- [Scott Hazen Mueller](#), Editor-in-Chief, Chairman and Founder of [CAUCE US](#), and Director of [International CAUCE \(iCAUCE\)](#);
- [Piete Brooks](#), pb@zorch.sf-bay.org, Tools Department;
- [John Levine](#), johnl@abuse.net, Scams Department;
- [Doug Muth](#), dmuth@zorch.sf-bay.org, Good Sites List;
- [Aliza Panitz](#), buglady@ability.net, News Flashes;
- [David Wright](#), dww@zorch.sf-bay.org, Other Voices.

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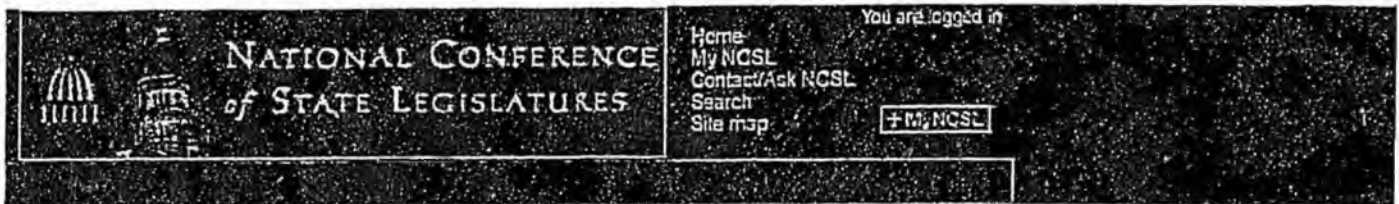
Oh, yeah. We get awards from time to time. About half of the places that have written to notify us about an award have disappeared to one degree or another. Here are the ones that are still extant as of 5 Mar 1999.



[Cool Central Site of the Hour for Friday, November 1, 1996 at 3AM.](#)



[Cool Central Site of the Day for Thursday, January 8, 1998. Still waiting for that threepat, guys.](#)



State Laws relating to Unsolicited Commercial or Bulk E-mail (SPAM)

August 2, 2002

Twenty-six states have enacted laws regulating unsolicited commercial or bulk electronic mail advertising. These laws generally:

- Prohibit misrepresenting or falsifying the origin of or the routing information on messages; using a third parties Internet address without permission, or including misleading information in the subject line of a message. Some states also prohibit the sale or distribution of software that is designed solely to falsify or forge the point of origin of or the routing information on e-mail messages.
- Require certain information, such as a toll-free telephone number or valid e-mail address, be included in the message so that recipients can opt out of receiving any future messages.
- Require labeling in the subject line of a message, to indicate whether the message contains an advertisement (e.g., ADV:) or materials that may only be viewed, purchased or possessed by adults (e.g., ADV:ADLT).

Arkansas	Ark. Stat. § 5-41-205
California	Calif. Business & Professions Code §§ 17538.4 to .45
California	Calif. Penal Code § 502
Colorado	Colo. Rev. Stat. §§ 6-2.5-101 to -105
Connecticut	Conn. Gen. Stat. § 53-451
Delaware	Del. Code tit. 11 §§ 937 - 938
Idaho	Idaho Code § 48-603E
Illinois	Il. Comp. Stat. 815 ILCS 511/1 to /15, 720 ILCS 5/16D-3
Iowa	Iowa Code §§ 714E.1, 714E.2
Kansas	2002 S.B. 467
Louisiana	La. Rev. Stat. §§ 73.1, 73.6

Maryland	Md. Code § 13-319 (2002 H.B. 915)
Minnesota	Minn. Stat. § 325F.694 (2002 S.B. 2908)
Missouri	Mo. Rev. Stat. §§ 407.1120, 407.1123, 407.1126, 407.1129, 407.1132
North Carolina	N.C. Gen. Stat. §§ 14-453, 14-458
Nevada	Nev. Rev. Stat. §§ 205.492, 205.511 to .513, 41.705 to .735
Ohio	Ohio Rev. Code §§ 2307.64, (2002 S.B. 8)
Oklahoma	Okla. Stat. tit. §§ 776.1, 776.2, 776.3, 776.4
Pennsylvania	Pa. Cons. Stat. tit. 18 § 5903 (1999 S.B. 262, Act. No. 25)
Rhode Island	R.I. Gen. Laws §§ 6-47-2, 11-52-4.1, 11-52-1, 11-52-2, 11-52-6
South Dakota	S.D. Codified Laws § 37-24-37 (2002 S.B. 183)
Tennessee	Tenn. Code §§ 47-18-1602, 47-18-1604, 47-18-2501, 47-18-2502
Utah	Utah Code §§ 13-34-101 to -104 (2002 H.B. 80)
Virginia	Va. Code §§ 18.2-152.4, 18.2-152.12
Washington	Wash. Rev. Code §§ 19.190.010 to .050
West Virginia	W. Va. Code §§ 46A-6G-1 to -6G5
Wisconsin	Wis. Stat. § 944.25

National Conference of State Legislatures
INFO@NCSL.ORG (autoresponse directory)

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7700 East First Place
Denver, CO 80230
Tel: 303-364-7700
Fax: 303-364-7800

Washington Office:
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
Tel: 202-624-5400
Fax: 202-737-1069

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SPAM with no
unsubscribe link

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From: helpmfa9w85nq4t8909191435@yahoo.com

To: lesgara@yahoo.com

Date: Thu, 19 Dec 2002 04:47:51 -0800

Subject: How to Find a Mortgage Lender

We have tried to reach you via phone and got no answer so we wanted to email and say your mortgage rate has been approved.

You have been selected for a 100% no cost to you Mortgage quote that could turn into 30/yr 5.9% Fixed Rates.

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How do you know

I got up to my little room and said my prayers

No one likes arrogance

[TE]



SPAM with no
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From: "Alden Concepts" <offers@aldenconcepts.com>
To: lesgara@yahoo.com
Date: Wed, 8 Jan 2003 19:48:41 -0500

This is a great product for submitting your website to thousands of search engines! Easy to use and over 30,000 engines and links!

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*Vanessa
FYI*

Honorable Lesil McGuire, Chair
House Judiciary Committee
Alaska Capital, Room 118
Juneau, AK 99801-1182

April 29, 2003

RE: HB 36 (Gara)-Support

Dear Chair McGuire:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support HB 36, authored by Representative Les Gara of your Committee and co-sponsored by seventeen of your House colleagues, including your Committee member Max Gruenberg.

As you can imagine, more and more older persons use the Internet each year. They use it for communications, learning, shopping, and entertainment. Retirees use the Internet to stay in touch with grandchildren as well as to communicate with each other. The AARP web site alone gets millions of "hits" each week. Every day AARP members are also victims of unwanted and uninvited "spam" that varies from commercial pitches to pornography. As Representative Gara points out in his Sponsor Statement, HB 36 is intended to protect our privacy and protect us from annoyance.

AARP could not agree more with the intent of this bill. Just as AARP is supporting a bill to curb unwanted telemarketing calls, we also support HB 36 and urge you to vote "AYE" on HB 36 and give all Alaskans the opportunity to avoid this nuisance on the internet.

We look forward to your support of HB 36 in the Judiciary Committee and we sincerely thank you in anticipation of that support.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
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cc: Vice-Chair Tom Anderson
Representative Dan Ogg
Representative Jim Holm
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg
Marie Darlin
Patrick Luby

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