

First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 03-0636.01 Duane Gall

HOUSE BILL 03-1200

HOUSE SPONSORSHIP

Rose

SENATE SPONSORSHIP

(None)

House Committees

Information & Technology

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ADDITION OF A NO-SOLICITATION LIST TO THE
102 "COLORADO JUNK E-MAIL LAW".

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Amends the "Colorado Junk E-mail Law" to include a no-solicitation list similar to the telemarketing no-call list.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 2.5 of title 6, Colorado Revised Statutes, is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 amended to read:

2

ARTICLE 2.5

3

Colorado Junk E-mail Law

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6-2.5-101. Short title. This article shall be known and may be cited as the "Colorado Junk E-mail Law".

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6-2.5-101.5. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

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(a) THE USE OF ELECTRONIC MAIL (E-MAIL) TO MARKET GOODS AND SERVICES IS WIDESPREAD;

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(b) MANY CITIZENS OF THIS STATE VIEW UNSOLICITED COMMERCIAL ELECTRONIC MAIL, COMMONLY REFERRED TO AS "SPAM", AS AN INVASION OF PRIVACY;

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(c) THE INSTANT LINKING OF CERTAIN SPAM E-MAIL MESSAGES TO WEB SITES CONTAINING OFFENSIVE OR PORNOGRAPHIC MATERIAL CREATES ADDITIONAL PROBLEMS FOR PARENTS OF YOUNG CHILDREN WHO MAY BECOME INADVERTENT VIEWERS OF SUCH MATERIAL;

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(d) INDIVIDUALS' PRIVACY RIGHTS AND COMMERCIAL FREEDOM OF SPEECH SHOULD BE BALANCED IN A WAY THAT ACCOMMODATES BOTH THE PRIVACY OF INDIVIDUALS AND LEGITIMATE TELEMARKETING PRACTICES;

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(e) ALTHOUGH CHARITABLE AND POLITICAL ORGANIZATIONS MAY BE EXEMPT FROM THE PROVISIONS OF THIS ARTICLE BECAUSE OF CONSIDERATIONS OF FREEDOM OF SPEECH, THE GENERAL ASSEMBLY ENCOURAGES SUCH ORGANIZATIONS TO VOLUNTARILY COMPLY WITH THIS ARTICLE WHEN POSSIBLE; AND

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(f) IT IS IN THE PUBLIC INTEREST TO ESTABLISH A MECHANISM UNDER WHICH THE INDIVIDUAL CITIZENS OF THIS STATE CAN DECIDE WHETHER OR NOT TO RECEIVE COMMERCIAL SOLICITATIONS BY

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1 ELECTRONIC MAIL.

2 **6-2.5-102. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (1) ~~"Current or prior business relationship" means:~~

5 ~~(a) The recipient has indicated a willingness to receive~~
6 ~~commercial electronic mail messages from that sender; or~~

7 ~~(b) The recipient has purchased or leased real property, goods, or~~
8 ~~services from the sender of the unsolicited commercial electronic mail~~
9 ~~message, the message from the sender directly concerns the purchase or~~
10 ~~lease, and the message is sent within the warranty period or within~~
11 ~~thirteen months after the date of purchase or lease, whichever period is~~
12 ~~a greater length of time; or~~

13 ~~(c) The recipient has an ongoing contract with the sender of the~~
14 ~~unsolicited commercial electronic mail message, and the message from~~
15 ~~the sender directly concerns the ongoing contract~~ "COLORADO NO-SPAM
16 LIST" MEANS THE DATABASE OF COLORADO RESIDENTIAL SUBSCRIBERS
17 THAT HAVE GIVEN NOTICE, IN ACCORDANCE WITH RULES PROMULGATED
18 UNDER SECTION 6-2.5-103.6, OF SUCH SUBSCRIBERS' OBJECTION TO
19 RECEIVING UNSOLICITED COMMERCIAL E-MAIL MESSAGES.

20 (2) "CONFORMING CONSOLIDATED NO-SPAM LIST" MEANS ANY
21 DATABASE THAT INCLUDES E-MAIL ADDRESSES OF RESIDENTIAL
22 SUBSCRIBERS THAT DO NOT WISH TO RECEIVE UNSOLICITED COMMERCIAL
23 E-MAIL MESSAGES, IF SUCH DATABASE HAS BEEN UPDATED WITHIN THE
24 PRIOR THIRTY DAYS TO INCLUDE ALL OF THE E-MAIL ADDRESSES ON THE
25 COLORADO NO-SPAM LIST.

26 (3) "CONFORMING LIST BROKER" MEANS ANY PERSON OR ENTITY
27 THAT PROVIDES LISTS FOR THE PURPOSE OF SENDING UNSOLICITED

1 COMMERCIAL E-MAIL MESSAGES, IF SUCH LISTS SHALL HAVE REMOVED, AT
2 A MINIMUM OF EVERY THIRTY DAYS, ANY E-MAIL ADDRESSES THAT ARE
3 INCLUDED ON THE COLORADO NO-SPAM LIST.

4 (4) "DESIGNATED AGENT" MEANS THE PARTY WITH WHICH THE
5 PUBLIC UTILITIES COMMISSION CONTRACTS UNDER SECTION 6-2.5-103.6
6 (2).

7 ~~(2)~~ (5) "Electronic mail", "E-MAIL", OR "EMAIL" means an
8 electronic message or computer file containing an image of a message
9 that is transmitted between two or more computers or electronic
10 terminals. "Electronic mail" includes electronic messages that are
11 transmitted within or between computer networks.

12 ~~(3)~~ (6) "Electronic mail service provider" means any person,
13 INCLUDING WITHOUT LIMITATION AN INTERNET SERVICE PROVIDER,
14 COMMONLY KNOWN AS AN "ISP", that ~~is~~ ACTS AS an intermediary in
15 sending or receiving electronic mail or provides to end users of electronic
16 mail services the ability to send or receive electronic mail.

17 (7) (a) "ESTABLISHED BUSINESS RELATIONSHIP" MEANS A
18 RELATIONSHIP THAT:

19 (I) WAS FORMED, PRIOR TO THE UNSOLICITED COMMERCIAL E-MAIL
20 MESSAGE, THROUGH A VOLUNTARY, TWO-WAY COMMUNICATION BETWEEN
21 A SELLER OR SELLER'S AGENT AND A RESIDENTIAL SUBSCRIBER, WITH OR
22 WITHOUT CONSIDERATION, ON THE BASIS OF AN APPLICATION, PURCHASE,
23 ONGOING CONTRACTUAL AGREEMENT, OR COMMERCIAL TRANSACTION
24 BETWEEN THE PARTIES REGARDING PRODUCTS OR SERVICES OFFERED BY
25 SUCH SELLER OR AGENT; AND

26 (II) HAS NOT BEEN PREVIOUSLY TERMINATED BY EITHER PARTY;
27 AND

1 (III) CURRENTLY EXISTS OR HAS EXISTED WITHIN THE
2 IMMEDIATELY PRECEDING EIGHTEEN MONTHS.

3 (b) "ESTABLISHED BUSINESS RELATIONSHIP", WITH RESPECT TO A
4 FINANCIAL INSTITUTION OR AFFILIATE, AS THOSE TERMS ARE DEFINED IN
5 SECTION 527 OF THE FEDERAL "GRAMM-LEACH-BLILEY ACT OF 1999",
6 INCLUDES ANY SITUATION IN WHICH A FINANCIAL INSTITUTION OR
7 AFFILIATE MAKES SOLICITATION CALLS RELATED TO OTHER FINANCIAL
8 SERVICES OFFERED, IF THE FINANCIAL INSTITUTION OR AFFILIATE IS
9 SUBJECT TO THE REQUIREMENTS REGARDING PRIVACY OF TITLE V OF THE
10 FEDERAL "GRAMM-LEACH-BLILEY ACT OF 1999", AND THE FINANCIAL
11 INSTITUTION OR AFFILIATE REGULARLY CONDUCTS BUSINESS IN
12 COLORADO.

13 (8) "INTERNET" MEANS THE INTERNATIONAL COMPUTER NETWORK
14 CONSISTING OF FEDERAL AND NONFEDERAL, INTEROPERABLE,
15 PACKET-CONTROLLED SWITCHED DATA NETWORKS.

16 ~~(4)~~ (9) "Person" shall have the same meaning as set forth in
17 section 2-4-401 (8), C.R.S.

18 (10) "RESIDENTIAL SUBSCRIBER" MEANS A PERSON WHO HAS
19 CONTRACTED WITH AN ELECTRONIC MAIL SERVICE PROVIDER FOR ONE OR
20 MORE NONCOMMERCIAL E-MAIL ACCOUNTS. "PERSON", AS USED IN THIS
21 SUBSECTION (10), ALSO INCLUDES ANY OTHER PERSONS LIVING OR
22 RESIDING WITH SUCH PERSON.

23 ~~(5)~~ (11) (a) "Unsolicited commercial electronic mail message"
24 means an electronic mail message sent ~~without the recipient's expressed~~
25 ~~permission~~ for the purpose of promoting real property, goods, or services
26 for sale or lease.

27 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (11),

1 "UNSOLICITED COMMERCIAL E-MAIL MESSAGE" DOES NOT INCLUDE
2 COMMUNICATIONS:

3 (I) TO ANY RESIDENTIAL SUBSCRIBER WITH THAT SUBSCRIBER'S
4 PRIOR EXPRESS INVITATION OR PERMISSION;

5 (II) BY OR ON BEHALF OF ANY PERSON OR ENTITY WITH WHOM A
6 RESIDENTIAL SUBSCRIBER HAS AN ESTABLISHED BUSINESS RELATIONSHIP;

7 (III) FOR THIRTY DAYS AFTER A RESIDENTIAL SUBSCRIBER HAS
8 CONTACTED A BUSINESS TO INQUIRE ABOUT THE POTENTIAL PURCHASE OF
9 GOODS OR SERVICES OR UNTIL THE SUBSCRIBER REQUESTS THAT NO
10 FURTHER E-MAILS BE SENT, WHICHEVER OCCURS FIRST;

11 (IV) BY OR ON BEHALF OF A CHARITABLE ORGANIZATION THAT IS
12 REQUIRED TO AND THAT HAS COMPLIED WITH THE NOTICE AND REPORTING
13 REQUIREMENTS OF SECTION 6-16-104 OR IS EXCLUDED FROM SUCH NOTICE
14 AND REPORTING REQUIREMENTS BY SECTION 6-16-103 (7);

15 (V) MADE FOR THE SOLE PURPOSE OF URGING SUPPORT FOR OR
16 OPPOSITION TO A POLITICAL CANDIDATE OR BALLOT ISSUE; OR

17 (VI) MADE FOR THE SOLE PURPOSE OF CONDUCTING POLITICAL
18 POLLS OR SOLICITING THE EXPRESSION OF OPINIONS, IDEAS, OR VOTES.

19 (c) "UNSOLICITED COMMERCIAL E-MAIL MESSAGE" INCLUDES ANY
20 COMMUNICATION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (11),
21 WHETHER SUCH COMMUNICATION ORIGINATES FROM A LIVE OPERATOR,
22 THROUGH THE USE OF AUTOMATIC DIALING AND RECORDED MESSAGE
23 EQUIPMENT, OR BY OTHER MEANS.

24 **6-2.5-103. Restrictions on certain commercial electronic mail**
25 **- violations of article.** (1) It shall be a violation of this article for any
26 person that sends an unsolicited commercial electronic mail message to
27 fail to disclose the actual point-of-origin electronic mail address of the

1 unsolicited commercial electronic mail message.

2 (2) It shall be a violation of this article for any person that sends
3 an unsolicited commercial electronic mail message to falsify electronic
4 mail transmission information or other routing information for the
5 unsolicited commercial electronic mail message.

6 (3) It shall be a violation of this article for any person that sends
7 an unsolicited commercial electronic mail message to use a third party's
8 internet address or domain name without the third party's consent for the
9 purposes of transmitting electronic mail.

10 (4) It shall be a violation of this article for any person that sends
11 an unsolicited commercial electronic mail message to fail to use the exact
12 characters "ADV:" (the capital letters "A", "D", and "V", in that order,
13 followed immediately by a colon) as the first four characters in the
14 subject line of an unsolicited commercial electronic mail message unless
15 the sender:

16 (a) Is an organization using electronic mail to communicate
17 exclusively with its members; or

18 (b) Is an organization using electronic mail to communicate
19 exclusively with its employees or contractors, or both; or

20 (c) Has ~~a current or prior~~ AN ESTABLISHED business relationship
21 with the recipient, as defined in section 6-2.5-102 ~~(1)~~ (7).

22 (5) It shall be a violation of this article for any person that sends
23 an unsolicited commercial electronic mail message to fail to provide a
24 mechanism allowing recipients to easily and at no cost remove
25 themselves from the sender's electronic mail address lists so that they are
26 not included in future mailings. It shall also be a violation of this article
27 to send unsolicited commercial electronic mail messages to any person

1 that has requested under this subsection (5) to be removed from the
2 sender's electronic mail lists or to provide the electronic mail address of
3 any such person to any third party, whether or not such third party is part
4 of the sender's business organization. However, electronic mail addresses
5 may be provided to any such person or to any third party for the sole
6 purpose of inclusion in do-not-email lists.

7 **6-2.5-103.3. Unlawful to send unsolicited commercial e-mail**
8 **messages to subscribers on the Colorado no-spam list - requirements**
9 **for unsolicited commercial e-mail messages generally.** (1) (a) No

10 PERSON SHALL SEND OR CAUSE TO BE SENT ANY UNSOLICITED
11 COMMERCIAL E-MAIL MESSAGE TO THE E-MAIL ACCOUNT OF ANY
12 RESIDENTIAL SUBSCRIBER IN THIS STATE WHO HAS ADDED HIS OR HER
13 E-MAIL ADDRESS AND ZIP CODE TO THE COLORADO NO-SPAM LIST IN
14 ACCORDANCE WITH RULES PROMULGATED UNDER SECTION 6-2.5-103.6.

15 (b) ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL
16 E-MAIL MESSAGE TO THE E-MAIL ACCOUNT OF ANY RESIDENTIAL
17 SUBSCRIBER IN THIS STATE SHALL REGISTER IN ACCORDANCE WITH THE
18 PROVISIONS OF SECTION 6-2.5-103.6 (3) (b) (II).

19 (2) ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL
20 E-MAIL MESSAGE TO THE E-MAIL ACCOUNT OF ANY RESIDENTIAL
21 SUBSCRIBER IN THIS STATE SHALL COMPLY WITH SECTION 6-2.5-103.

22 (3) PERSONS DESIRING TO SEND UNSOLICITED COMMERCIAL E-MAIL
23 MESSAGES SHALL UPDATE THEIR COPIES OF THE COLORADO NO-SPAM LIST,
24 CONFORMING CONSOLIDATED NO-SPAM LIST, OR A LIST OBTAINED FROM A
25 CONFORMING LIST BROKER WITHIN THIRTY DAYS AFTER THE BEGINNING OF
26 EVERY CALENDAR QUARTER, ON OR AFTER JULY 1, 2004, OR UPON THE
27 INITIAL AVAILABILITY AND ACCESSABILITY OF THE COLORADO NO-SPAM

1 LIST, WHICHEVER IS EARLIER.

2 **6-2.5-103.6. Establishment and operation of a Colorado**

3 **no-spam list.** (1) THE COLORADO NO-SPAM LIST PROGRAM IS HEREBY
4 CREATED FOR THE PURPOSE OF ESTABLISHING A DATABASE TO USE WHEN
5 VERIFYING RESIDENTIAL SUBSCRIBERS IN THIS STATE WHO HAVE GIVEN
6 NOTICE, IN ACCORDANCE WITH RULES PROMULGATED UNDER PARAGRAPH
7 (b) OF SUBSECTION (3) OF THIS SECTION, OF SUCH SUBSCRIBERS' OBJECTION
8 TO RECEIVING UNSOLICITED COMMERCIAL E-MAIL MESSAGES. THE
9 PROGRAM SHALL BE ADMINISTERED BY THE PUBLIC UTILITIES COMMISSION.

10 (2) NOT LATER THAN JANUARY 1, 2004, THE PUBLIC UTILITIES
11 COMMISSION SHALL CONTRACT WITH A DESIGNATED AGENT, WHICH SHALL
12 MAINTAIN THE WEB SITE AND DATABASE CONTAINING THE COLORADO
13 NO-SPAM LIST. IF NO MORE THAN ONE ENTITY BIDS ON THE CONTRACT, THE
14 PUBLIC UTILITIES COMMISSION MAY AWARD, AT ITS DISCRETION, SUCH
15 CONTRACT.

16 (3) (a) NOT LATER THAN JULY 1, 2004, THE DESIGNATED AGENT,
17 USING THE DESIGNATED STATE INTERNET WEB SITE, SHALL DEVELOP AND
18 MAINTAIN THE COLORADO NO-SPAM LIST DATABASE WITH INFORMATION
19 PROVIDED BY RESIDENTIAL SUBSCRIBERS.

20 (b) THE PUBLIC UTILITIES COMMISSION SHALL ESTABLISH, BY RULE,
21 GUIDELINES FOR THE DESIGNATED AGENT FOR THE DEVELOPMENT AND
22 MAINTENANCE OF THE COLORADO NO-SPAM LIST SO THAT THE NO-SPAM
23 LIST CAN EASILY BE ACCESSED BY PERSONS DESIRING TO SEND
24 UNSOLICITED COMMERCIAL E-MAIL MESSAGES, AND BY STATE AND LOCAL
25 LAW ENFORCEMENT AGENCIES. NO LATER THAN APRIL 1, 2004, THE
26 PUBLIC UTILITIES COMMISSION SHALL PROMULGATE RULES THAT:

27 (I) SPECIFY THAT THERE SHALL BE NO COST FOR A RESIDENTIAL

1 SUBSCRIBER TO PROVIDE NOTIFICATION TO THE DESIGNATED AGENT THAT
2 SUCH SUBSCRIBER OBJECTS TO RECEIVING UNSOLICITED COMMERCIAL
3 E-MAIL MESSAGES;

4 (II) SPECIFY THAT THERE SHALL BE AN ANNUAL REGISTRATION FEE
5 OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR PERSONS OR ENTITIES
6 THAT WISH TO SEND UNSOLICITED COMMERCIAL E-MAIL MESSAGES OR
7 OTHERWISE ACCESS THE DATABASE OF E-MAIL ADDRESSES AND ZIP CODES
8 CONTAINED IN THE COLORADO NO-SPAM LIST DATABASE. THE PUBLIC
9 UTILITIES COMMISSION SHALL DETERMINE SUCH FEE ON A SLIDING SCALE
10 SO THAT PERSONS OR ENTITIES WITH FEWER THAN FIVE EMPLOYEES SHALL
11 PAY NO FEE. IN ADDITION, THERE SHALL BE NO FEE CHARGED TO
12 CONFORMING LIST BROKERS OR NONPROFIT CORPORATIONS, AS DEFINED
13 IN SECTION 7-121-401 (26), C.R.S. THE MAXIMUM FEE SHALL BE CHARGED
14 ONLY TO PERSONS OR ENTITIES WITH MORE THAN ONE THOUSAND
15 EMPLOYEES. MONEYS COLLECTED FROM SUCH FEES SHALL COVER THE
16 DIRECT AND INDIRECT COSTS RELATED TO THE CREATION AND OPERATION
17 OF THE COLORADO NO-SPAM LIST. MONEYS FROM SUCH FEES SHALL BE
18 COLLECTED BY AND PAID DIRECTLY TO THE DESIGNATED AGENT. THE
19 PUBLIC UTILITIES COMMISSION SHALL HAVE THE AUTHORITY TO ANNUALLY
20 ADJUST THE FEES BELOW THE STATED MAXIMUM BASED ON REVENUE
21 HISTORY OF THE FEES RECEIVED BY THE DESIGNATED AGENT. THE
22 DESIGNATED AGENT SHALL PROVIDE MEANS FOR ON-LINE REGISTRATION
23 AND CREDIT CARD PAYMENT OF FEES CHARGED PURSUANT TO THIS
24 SUBPARAGRAPH (II). EACH SUCH PERSON OR ENTITY SHALL PROVIDE A
25 CURRENT BUSINESS NAME, BUSINESS ADDRESS, EMAIL ADDRESS, AND
26 TELEPHONE NUMBER WHEN INITIALLY REGISTERING FOR THE NO-SPAM
27 LIST. THIS INFORMATION SHALL BE UPDATED WHEN CHANGES OCCUR.

1 (III) SPECIFY THAT THE METHOD BY WHICH EACH RESIDENTIAL
2 SUBSCRIBER MAY GIVE NOTICE TO THE DESIGNATED AGENT OF HIS OR HER
3 OBJECTION TO RECEIVING UNSOLICITED COMMERCIAL E-MAIL MESSAGES,
4 OR MAY REVOKE SUCH NOTICE, SHALL BE EXCLUSIVELY BY ENTERING THE
5 E-MAIL ADDRESS AND ZIP CODE OF THE SUBSCRIBER DIRECTLY INTO THE
6 DATABASE VIA THE DESIGNATED STATE INTERNET WEB SITE;

7 (IV) SPECIFY THAT THE DATE OF EVERY NOTICE RECEIVED IN
8 ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH (b) BE
9 RECORDED AND INCLUDED AS PART OF THE INFORMATION IN THE NO-SPAM
10 LIST;

11 (V) REQUIRE THE DESIGNATED AGENT TO PROVIDE UPDATED
12 INFORMATION ABOUT THE COLORADO NO-SPAM LIST PROGRAM ON THE
13 DESIGNATED STATE WEB SITE, SUBJECT TO SUPERVISION BY THE PUBLIC
14 UTILITIES COMMISSION;

15 (VI) PROHIBIT THE DESIGNATED AGENT OR ANY PERSON OR ENTITY
16 COLLECTING INFORMATION TO BE TRANSMITTED TO THE DESIGNATED
17 AGENT FROM MAKING ANY USE OR DISTRIBUTION OF SUBSCRIBER
18 INFORMATION CONTAINED IN THE NO-SPAM LIST EXCEPT AS EXPRESSLY
19 AUTHORIZED UNDER THIS ARTICLE;

20 (VII) SPECIFY THE METHODS BY WHICH ADDITIONS, DELETIONS,
21 CHANGES, AND MODIFICATIONS SHALL BE SENT TO THE COLORADO
22 NO-SPAM LIST DATABASE AND HOW UPDATES OF THE DATABASE SHALL BE
23 MADE AVAILABLE TO PERSONS OR ENTITIES DESIRING SUCH UPDATES.
24 SUCH METHODS SHALL INCLUDE PROVISIONS TO REMOVE FROM THE
25 COLORADO NO-SPAM LIST, ON AT LEAST AN ANNUAL BASIS, ANY E-MAIL
26 ADDRESS THAT HAS BEEN DISCONNECTED OR REASSIGNED.

27 (VIII) REQUIRE THE DESIGNATED AGENT TO MAINTAIN AN

1 AUTOMATED, ON-LINE COMPLAINT SYSTEM FOR RESIDENTIAL SUBSCRIBERS
2 TO REPORT SUSPECTED VIOLATIONS OVER THE INTERNET WEB SITE. THE
3 AUTOMATED, ON-LINE COMPLAINT SYSTEM SHALL HAVE THE CAPABILITY
4 TO COLLECT, SORT, AND REPORT SUSPECTED VIOLATIONS TO THE
5 APPROPRIATE STATE ENFORCEMENT AGENCY ELECTRONICALLY FOR
6 ENFORCEMENT PURPOSES.

7 (IX) SPECIFY THAT THE NO-SPAM LIST SHALL BE AVAILABLE ON
8 LINE AT THE COLORADO NO-SPAM LIST WEB SITE TO A PERSON OR ENTITY
9 DESIRING TO SEND UNSOLICITED COMMERCIAL E-MAIL MESSAGES IF THE
10 PERSON OR ENTITY HAS REGISTERED IN ACCORDANCE WITH THE
11 PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b). THE LIST
12 SHALL BE AVAILABLE IN A TEXT OR OTHER COMPATIBLE FORMAT, AT THE
13 DISCRETION OF THE PUBLIC UTILITIES COMMISSION, BUT SHALL ALLOW FOR
14 SELECTION AND SORTING BY SPECIFIC ZIP CODES. BULK E-MAILERS AND
15 CONFORMING LIST BROKERS SHALL NOT RECEIVE ADDITIONAL
16 COMPENSATION FOR DISTRIBUTING THE COLORADO NO-SPAM LIST, BUT ARE
17 ENCOURAGED TO FREELY DISTRIBUTE THE COLORADO NO-SPAM LIST AT NO
18 COST.

19 (X) SPECIFY SUCH OTHER MATTERS RELATING TO THE DATABASE
20 AS THE PUBLIC UTILITIES COMMISSION DEEMS NECESSARY OR DESIRABLE.

21 (c) IF THE APPROPRIATE FEDERAL AGENCY ESTABLISHES A SINGLE
22 NATIONAL DATABASE OF E-MAIL ADDRESSES OF RESIDENTIAL SUBSCRIBERS
23 WHO OBJECT TO RECEIVING UNSOLICITED COMMERCIAL E-MAIL MESSAGES,
24 THE DESIGNATED AGENT SHALL INCLUDE THAT PORTION OF SUCH SINGLE
25 NATIONAL DATABASE THAT RELATES TO COLORADO IN THE COLORADO
26 NO-SPAM LIST ESTABLISHED UNDER THIS ARTICLE.

27 (4) THE STATE SHALL NOT BE LIABLE TO ANY PERSON FOR

1 GATHERING, MANAGING, OR USING INFORMATION IN THE COLORADO
2 NO-SPAMLIST DATABASE PURSUANT TO THIS ARTICLE AND FOR ENFORCING
3 THE PROVISIONS OF THIS ARTICLE.

4 (5) THE DESIGNATED AGENT SHALL NOT BE LIABLE TO ANY PERSON
5 FOR PERFORMING ITS DUTIES UNDER THIS ARTICLE UNLESS, AND ONLY TO
6 THE EXTENT THAT, THE DESIGNATED AGENT COMMITS A WILLFUL AND
7 WANTON ACT OR OMISSION.

8 (6) BEGINNING NOT LATER THAN JULY 1, 2004, THE DESIGNATED
9 AGENT SHALL UPDATE THE DATABASE, ON AN ONGOING BASIS, WITH
10 INFORMATION PROVIDED BY RESIDENTIAL SUBSCRIBERS AND ELECTRONIC
11 MAIL SERVICE PROVIDERS.

12 (7) NO PERSON SHALL PLACE THE E-MAIL ADDRESS OF ANOTHER
13 PERSON ON THE COLORADO NO-SPAM LIST WITHOUT THE AUTHORIZATION
14 OF THE PERSON TO WHOM THE ADDRESS IS ASSIGNED.

15 (8) BEGINNING NOT LATER THAN JULY 1, 2004, THE PUBLIC
16 UTILITIES COMMISSION SHALL SUBMIT A REPORT TO THE JOINT BUDGET
17 COMMITTEE EVERY SIX MONTHS. THIS REPORT SHALL INCLUDE FEE
18 REVENUES RECEIVED IN THE PREVIOUS SIX MONTHS, EXPENDITURES FOR
19 ADMINISTRATION OF THE PROGRAM FOR THE PREVIOUS SIX MONTHS,
20 PROJECTIONS OF FEE REVENUES FOR THE NEXT TWELVE MONTHS, AND
21 PROJECTIONS OF EXPENDITURES FOR ADMINISTRATION OF THE PROGRAM
22 FOR THE NEXT TWELVE MONTHS. EXPENDITURES FOR ADMINISTRATION OF
23 THE PROGRAM INCLUDE THE EXPENDITURES OF THE DESIGNATED AGENT
24 AND EXPENDITURES OF THE PUBLIC UTILITIES COMMISSION.

25 **6-2.5-104. Enforcement - civil right of action for damages -**
26 **civil penalties - defenses.** (1) In the case of any violation of this article,
27 the following entities may each separately file a civil action in a court of

1 competent jurisdiction and may each, upon proof of such violation,
2 recover such sums as are allowed under this section:

3 (a) The person receiving an unsolicited commercial electronic
4 mail message;

5 (b) Any electronic mail service provider whose network or
6 facilities were used in the transmission or attempted transmission of an
7 unsolicited commercial electronic mail message.

8 (2) (a) In any such action, the prevailing party other than the
9 originator of the unsolicited commercial electronic mail message shall be
10 entitled to actual damages. Upon a showing that the sender of an
11 unsolicited commercial electronic mail message violated any provision of
12 this article, whether or not the violation resulted in a financial loss or
13 injury, the prevailing party other than the originator of the unsolicited
14 commercial electronic mail message may recover attorney fees and costs.

15 (b) In any such action, the prevailing party other than the
16 originator of the unsolicited commercial electronic mail message is also
17 entitled to recover as part of the judgment a civil penalty in the amount
18 of ten dollars for each unsolicited commercial electronic mail message
19 transmitted in violation of this article.

20 (2.5) (a) ON AND AFTER JULY 1, 2004, VIOLATION OF ANY
21 PROVISION OF SECTION 6-2.5-103.3 OR 6-2.5-103.6 CONSTITUTES A
22 DECEPTIVE TRADE PRACTICE UNDER THE PROVISIONS OF SECTION 6-1-105
23 (1) AND MAY BE ENFORCED UNDER SECTIONS 6-1-110, 6-1-112, AND
24 6-1-113. NO STATE ENFORCEMENT ACTION UNDER THIS ARTICLE MAY BE
25 BROUGHT AGAINST A PERSON OR ENTITY FOR FEWER THAN THREE
26 VIOLATIONS PER MONTH.

27 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2.5),

1 IT SHALL NOT BE A VIOLATION OF THIS SECTION IF:

2 (I) THE PERSON OR ENTITY HAS OTHERWISE FULLY COMPLIED WITH
3 THE PROVISIONS OF THIS ARTICLE AND HAS ESTABLISHED AND
4 IMPLEMENTED, PRIOR TO THE VIOLATION, WRITTEN PRACTICES AND
5 PROCEDURES TO EFFECTIVELY PREVENT UNSOLICITED COMMERCIAL E-MAIL
6 MESSAGES IN VIOLATION OF THIS ARTICLE; OR

7 (II) THE VIOLATION RESULTED FROM AN ERROR IN TRANSCRIPTION
8 OR OTHER TECHNICAL DEFECT, NOT THE FAULT OF THE PERSON OR ENTITY,
9 THAT CAUSED THE INFORMATION IN THE NO-SPAM LIST AS RECEIVED BY
10 THE PERSON OR ENTITY TO DIFFER FROM THE INFORMATION THAT WAS OR
11 SHOULD HAVE BEEN INCLUDED IN THE NO-SPAM LIST AS TRANSMITTED BY
12 THE DESIGNATED AGENT.

13 (c) NO ELECTRONIC MAIL SERVICE PROVIDER AND NO LOCAL
14 EXCHANGE PROVIDER, AS DEFINED IN SECTION 40-15-102 (18), C.R.S.,
15 SHALL BE HELD LIABLE FOR VIOLATIONS OF THIS ARTICLE COMMITTED BY
16 OTHER PERSONS OR ENTITIES.

17 (3) The remedies, duties, prohibitions, and penalties of this
18 section are not exclusive and are in addition to all other causes of action,
19 remedies, and penalties provided by law.

20 (4) At the request of any party to an action brought pursuant to
21 this section, the court may, in its discretion, conduct all legal proceedings
22 in such a way as to protect the secrecy and security of any computer,
23 computer network, computer data, or computer software involved in order
24 to prevent possible recurrence of the same or similar conduct by another
25 person and to protect the trade secrets of any party.

26 (5) Electronic mail service providers that adopt and implement
27 terms, conditions, or technical measures with the intent to prevent or

1 prohibit the origination or transmission of unsolicited commercial
2 electronic mail messages in violation of this article shall be immune from
3 civil liability for any such actions, and no provision of this article shall
4 be construed to create any liability for such actions.

5 (6) No electronic mail service provider shall be liable for the mere
6 transmission of unsolicited commercial electronic mail messages over the
7 provider's computer network or facilities.

8 (7) The provisions of this article shall not be construed to require
9 any electronic mail service provider to carry or deliver any electronic
10 mail merely because a sender complies with the provisions of this article.

11 **6-2.5-105. Scope of article.** This article shall apply when an
12 unsolicited commercial electronic mail message is sent to a Colorado
13 resident via an electronic mail service provider's service or leased or
14 owned equipment located in this state.

15 **6-2.5-106. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
16 THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD
17 INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR
18 APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE
19 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF
20 THIS ARTICLE ARE DECLARED TO BE SEVERABLE.

21 **6-2.5-107. Acceptance of gifts, grants, and donations.** THE
22 PUBLIC UTILITIES COMMISSION MAY ACCEPT AND EXPEND MONEYS FROM
23 GIFTS, GRANTS, AND DONATIONS FOR PURPOSES OF ADMINISTERING THE
24 PROVISIONS OF THIS ARTICLE.

25 **SECTION 2. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.