

§1497. Electronic mail solicitation restricted

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "E-mail" means electronic mail sent or delivered by transmission over the Internet. [PL 2003, c. 327, §1 (NEW).]

B. "E-mail service provider" means a business or organization qualified to do business in this State that provides individuals, corporations or other entities the ability to send or receive e-mail through equipment located in this State or that is an intermediary in sending or receiving e-mail. [PL 2003, c. 327, §1 (NEW).]

C. "Unsolicited commercial e-mail" means an e-mail, other than an e-mail sent at the request of the recipient, sent via an e-mail service provider to 2 or more recipients in this State with whom the sender does not have an existing business relationship for the purpose of:

- (1) Offering real property, goods or services for sale or rent;
- (2) Conveying information on real property, goods or services to solicit sales or purchase;
- (3) Conveying information on the extension of credit; or
- (4) Promoting or soliciting charitable contributions.

"Unsolicited commercial e-mail" does not include an e-mail message to which an e-mail service provider has attached an advertisement if the e-mail service provider has an agreement with the recipient under which the e-mail service provider allows the recipient free use of an e-mail account in exchange for allowing the e-mail service provider to send such advertisements. [RR 2003, c. 1, §5 (COR).]

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2. Requirements. A person sending unsolicited commercial e-mail shall maintain a valid return e-mail address through which the recipient may provide notice to the sender that the recipient does not wish to receive any more unsolicited commercial e-mail.

[PL 2003, c. 327, §1 (NEW).]

3. Statement. All unsolicited commercial e-mail must contain:

A. In the subject line:

- (1) The first 4 characters as follows: "ADV:"; and
- (2) If the unsolicited commercial e-mail contains information about material that may be viewed only by a person at least 18 years of age, the first 8 characters as follows: "ADV:ADLT"; [PL 2003, c. 327, §1 (NEW).]

B. A statement informing the recipient of the name of the person or entity from which the unsolicited commercial e-mail originated; [PL 2003, c. 327, §1 (NEW).]

C. The return e-mail address required by subsection 2; and [PL 2003, c. 327, §1 (NEW).]

D. A statement informing the recipient that the recipient may use the return e-mail address to notify the sender that the recipient does not want to receive any more unsolicited commercial e-mails from the sender. [PL 2003, c. 327, §1 (NEW).]

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4. Prohibition. A person receiving notification from a recipient that the recipient does not wish to receive any more unsolicited commercial e-mails from that person shall cease to send unsolicited commercial e-mails to that recipient. If a recipient is the registered owner of more than one e-mail address and notifies the sender of unsolicited commercial e-mails to cease sending unsolicited

commercial e-mails to all of the e-mail addresses registered to that person or entity, the sender shall cease to send unsolicited commercial e-mails to those addresses.

[PL 2003, c. 327, §1 (NEW).]

5. Use of 3rd-party domain names. A person may not:

A. Send an unsolicited commercial e-mail that uses a 3rd party's Internet address or domain name without the 3rd party's consent; or [PL 2003, c. 327, §1 (NEW).]

B. Falsify the e-mail transmission information or other routing information of an unsolicited commercial e-mail. [PL 2003, c. 327, §1 (NEW).]

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6. Penalty. Violation of this chapter is an unfair trade practice as prohibited by Title 5, section 207. Each unsolicited commercial e-mail transmission to a recipient in violation of this chapter constitutes a separate violation. The Attorney General shall establish procedures for receiving and investigating complaints of violations of this chapter. The procedures may include the development of electronic forms, available over the Internet, by which a person may file a complaint with the Attorney General alleging a violation of this chapter.

[PL 2003, c. 327, §1 (NEW).]

7. Civil action; recipients. Notwithstanding Title 5, section 213, a person who receives a commercial e-mail sent in violation of this chapter may bring an action in an appropriate state court for either or both of the following:

A. An injunction to stop such future e-mails; and [PL 2003, c. 327, §1 (NEW).]

B. Recovery of actual damages from each violation or up to \$250 in damages for each violation, whichever is greater. [PL 2003, c. 327, §1 (NEW).]

If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under paragraph B.

[PL 2003, c. 327, §1 (NEW).]

8. Civil action; e-mail service providers. Notwithstanding Title 5, section 213, an e-mail service provider through whose service is sent a commercial e-mail in violation of this chapter may bring an action in an appropriate state court for either or both of the following:

A. An injunction to stop such future e-mails; and [PL 2003, c. 327, §1 (NEW).]

B. Recovery of actual damages from each violation or up to \$1,000 in damages for each violation, whichever is greater. [PL 2003, c. 327, §1 (NEW).]

If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under paragraph B.

[PL 2003, c. 327, §1 (NEW).]

9. Immunity. An e-mail service provider may, upon its own initiative, block the receipt or transmission through its service of any commercial e-mail that it reasonably believes is or will be sent in violation of this chapter. An e-mail service provider is not liable for any action taken in good faith to block the receipt or transmission through its service of any commercial e-mail that it reasonably believes is or will be sent in violation of this chapter.

[PL 2003, c. 327, §1 (NEW).]

SECTION HISTORY

RR 2003, c. 1, §5 (COR). PL 2003, c. 327, §1 (NEW).

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