

As Introduced

124th General Assembly
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S. B. No. 8

SENATOR Amstutz

A B I L L

To enact section 2913.042 of the Revised Code to
regulate the transmission of electronic mail
advertisements.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2913.042 of the Revised Code be
enacted to read as follows:

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Sec. 2913.042. (A) As used in this section:

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(1) "Advertisement" has the same meaning as in section
4931.55 of the Revised Code.

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(2) "Computer," "computer network," "computer program," and
"computer software" have the same meanings as in section 2913.01
of the Revised Code.

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(3) "Electronic mail" means an electronic message that is
transmitted between two or more computers or electronic terminals,
whether or not the message is converted to hard copy format after
receipt, and whether or not the message is viewed upon the
transmission or stored for later retrieval. "Electronic mail"
includes electronic messages that are transmitted through a local,
regional, or global computer network.

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(4) "Electronic mail advertisement" means an electronic

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message containing an advertisement that is sent via the internet,
the principal purpose of which is the advertising, promoting, or
marketing of any good, service, or enterprise to the recipients.

(5) "Electronic mail service provider" means any person that
is an intermediary in sending and receiving electronic mail and
provides to users of electronic mail services the ability to send
or receive electronic mail.

(6) "Internet" means a hierarchy of computer networks and
systems that includes, but is not limited to, commercial networks
(.com or .co), government networks (.gov), military networks
(.mil), university networks (.ac or .edu), and other research
networks (.org or .net) and spans many different physical networks
and systems around the world.

(7) "Originating address" means the string of characters used
to specify the source of any electronic mail message.

(8) "Receiving address" means the string of characters used
to specify the recipient of any electronic mail message.

(9) "Recipient" means a person who receives an item of
electronic mail or an electronic mail advertisement.

(B) No person shall use a computer, a computer network, or
the computer services of an electronic mail service provider to
transmit an electronic mail advertisement in contravention of the
authority granted by, or in violation of the policies set by, the
electronic mail service provider. This division shall not apply to
any of the following:

(1) A person, including an interactive computer service, that
provides users with access to a computer network and, as a
condition of providing the access, requires users to receive
unsolicited advertisements;

(2) Electronic mail advertisements that are accessed by the

recipient from an electronic bulletin board;

(3) The transmission of an electronic mail advertisement from
an organization or similar entity to a member of the organization
or similar entity.

(C)(1) Except as otherwise provided in divisions (B) and (I)
of this section, a person that transmits or causes to be
transmitted to a recipient an electronic mail advertisement shall
clearly and conspicuously provide both of the following to the
recipient at the same time as the transmission of the electronic
mail advertisement:

(a) The individual or business name, complete residence or
business address, and electronic mail address of the person
transmitting the electronic mail advertisement;

(b) A notice that the recipient may decline to receive from
the person transmitting the electronic mail advertisement any
additional electronic mail advertisements and a detailed procedure
for declining to receive any electronic mail advertisements.

(2) If the recipient of an electronic mail advertisement uses
the procedure contained in the notice described in division
(C)(1)(b) of this section to decline to receive the type of
electronic mail advertisement that is contained in the notice, the
person that transmitted the original electronic mail advertisement
shall not transmit to the recipient any additional electronic mail
advertisements.

(D) No person shall use a computer, a computer program, a
computer network, or the computer services of an electronic mail
service provider with the intent to forge the originating address
or other routing information in any manner in connection with the
transmission of an electronic mail advertisement through or into
the network of an electronic mail service provider or its
subscribers.

(E) No person shall knowingly give, sell, or otherwise 81
distribute or possess with the intent to sell, give, or distribute 82
a computer program or computer software that facilitates or 83
enables the forgery of the originating address or other routing 84
information for the purpose of sending an electronic mail 85
advertisement through or into the facilities of an electronic mail 86
service provider or its subscribers. 87

(F) No internet service provider shall be liable for 88
transmitting another person's electronic mail advertisement 89
through its network nor for any action voluntarily taken in good 90
faith to block the receipt or transmission through its service of 91
any electronic mail advertisement that it believes is, or will be 92
sent, in violation of its policies. An internet service provider 93
may disconnect or terminate the service of any person that is in 94
violation of the internet service provider's policies. 95

(G) If a person violates division (B) or (C) of this section, 96
the recipient of the electronic mail advertisement transmitted in 97
violation of either of those divisions may bring a civil action 98
against that person to enforce that division. The recipient who 99
brings a civil action under this division may recover both of the 100
following: 101

(1) Actual damages or damages of ten dollars per electronic 102
mail advertisement received in violation of division (B) or (C) of 103
this section, whichever is greater; 104

(2) Attorney's fees, court costs, and other costs of bringing 105
the action. 106

(H) In addition to any other recovery that is allowed 107
pursuant to division (G) of this section, the recipient of an 108
electronic mail advertisement transmitted in violation of this 109
section may apply to the court of common pleas in the county in 110
which the recipient resides for an order enjoining the person who 111

transmitted that electronic mail advertisement from transmitting 112
to the recipient any other electronic mail advertisement. 113

(I) A person is not liable to a recipient for civil damages 114
under this section if the person transmits or causes to be 115
transmitted to the recipient an electronic mail advertisement if 116
one of the following applies: 117

(1) The person has a preexisting business or personal 118
relationship with the recipient. 119

(2) The recipient has expressly consented to receive the item 120
of electronic mail from the person. 121

(J) Whoever violates division (D) of this section is guilty 122
of using a computer program or computer software to forge an 123
originating address, a felony of the fifth degree. 124

(K) Whoever violates division (E) of this section is guilty 125
of distributing a computer program or computer software used to 126
forge an originating address, a misdemeanor of the fourth degree. 127

(L) Each use or distribution of a computer program or 128
computer software in violation of division (D) or (E) of this 129
section is a separate offense. 130