

**As Reported by the House Economic Development and Small
Business Committee**

**124th General Assembly
Regular Session
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Sub. S. B. No. 8

**SENATORS Amstutz, Harris, Austria, Blessing, Brady, Spada, Mumper
REPRESENTATIVES Collier, Hagan, McGregor, G. Smith**

A B I L L

To enact section 2307.64 of the Revised Code to 1
regulate the transmission of electronic mail 2
advertisements. 3

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

Section 1. That section 2307.64 of the Revised Code be 4
enacted to read as follows: 5

Sec. 2307.64. (A) As used in this section: 6

(1) "Advertisement" has the same meaning as in section 7
4931.55 of the Revised Code. 8

(2) "Computer," "computer network," "computer program," 9
"computer services," and "telecommunications device" have the same 10
meanings as in section 2913.01 of the Revised Code. 11

(3) "Electronic mail" means an electronic message that is 12
transmitted between two or more telecommunications devices or 13
electronic devices capable of receiving electronic messages, 14
whether or not the message is converted to hard copy format after 15
receipt, and whether or not the message is viewed upon the 16
transmission or stored for later retrieval. "Electronic mail" 17

As Reported by the House Economic Development and Small Business Committee

includes electronic messages that are transmitted through a local, regional, or global computer network.

(4) "Electronic mail advertisement" means electronic mail containing an advertisement.

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

(6) "Internet" has the same meaning as in section 341.42 of the Revised Code.

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

(8) "Person" has the same meaning as in section 1.59 of the Revised Code, but when a person is not an individual, the person responsible for transmitting or causing to be transmitted an electronic mail advertisement is the particular division of the partnership, corporation, or other business entity actually responsible for the transmission of the electronic mail advertisement.

(9) "Pre-existing business relationship" means that there was a business transaction between the initiator and the recipient of a commercial electronic mail message during the five-year period preceding the receipt of that message. A pre-existing business relationship includes a transaction involving the free provision of information, goods, or services requested by the recipient. A pre-existing business relationship does not exist after a recipient requests to be removed from the distribution lists of an initiator pursuant to division (B) of this section and a reasonable amount of time has expired since that request.

(10) "Receiving address" means the string of characters used

As Reported by the House Economic Development and Small Business Committee

to specify a recipient with each receiving address creating a
unique and separate recipient.

(11) "Recipient" means a person who receives an electronic
mail advertisement at any one of the following receiving
addresses:

(a) A receiving address furnished by an electronic mail
service provider that bills for furnishing and maintaining that
receiving address to a mailing address within this state;

(b) A receiving address ordinarily accessed from a computer
located within this state;

(c) A receiving address ordinarily accessed by a person
domiciled within this state;

(d) Any other receiving address with respect to which the
obligations imposed by this section can be imposed consistent with
the United States Constitution.

(B)(1) Except as otherwise provided in division (F) of this
section, a person that transmits or causes to be transmitted to a
recipient an electronic mail advertisement shall clearly and
conspicuously provide to the recipient, within the body of the
electronic mail advertisement, both of the following:

(a) The person's name and complete residence or business
address and the 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 or causing to be transmitted the
electronic mail advertisement any additional electronic mail
advertisements and a detailed procedure for declining to receive
any additional electronic mail advertisements at no cost. The
notice shall be of the same size of type as the majority of the
text of the message and shall not require that the recipient

As Reported by the House Economic Development and Small Business Committee

provide any information other than the receiving address. 79

(2) If the recipient of an electronic mail advertisement uses 80
the procedure contained in the notice described in division 81
(B)(1)(b) of this section to decline to receive any additional 82
electronic mail advertisements, the person that transmitted or 83
caused to be transmitted the original electronic mail 84
advertisement, within a reasonable period of time, shall cease 85
transmitting or causing to be transmitted to the receiving address 86
any additional electronic mail advertisements. 87

(3) A person does not violate division (B) of this section if 88
the person transmits or causes to be transmitted to the recipient 89
an electronic mail advertisement when any of the following apply: 90

(a) The person has a pre-existing business or personal 92
relationship with the recipient. 93

(b) The recipient has consented or has agreed as a condition 94
of service to receive the electronic mail advertisement. 95

(c) The recipient receives the electronic mail advertisement 96
because another recipient forwarded the advertisement to that 97
recipient via an internet web site or another recipient made a 98
direct referral of that recipient to receive the advertisement. 99

(C) No person shall use a computer, a computer network, or 100
the computer services of an electronic mail service provider to 101
transmit an electronic mail advertisement in contravention of the 102
authority granted by, or in violation of the policies related to 103
electronic mail advertisements set by, the electronic mail service 104
provider if the electronic mail service provider has provided the 105
person notice of those policies. For the purposes of this 106
division, notice of those policies shall be deemed sufficient if 107
an electronic mail service provider maintains an easily accessible 108
web page containing its policies regarding electronic mail 109

As Reported by the House Economic Development and Small Business Committee

advertisements and can demonstrate that notice was supplied via
electronic means between the sending and receiving computers.

(D) No electronic mail service provider shall be liable for
transmitting another person's electronic mail advertisement
through its service in violation of this section, or shall be
liable for any action it voluntarily takes in good faith to block
the receipt or transmission through its service of any electronic
mail advertisement that it believes is, or will be sent, in
violation of this section.

(E) A recipient of an electronic mail advertisement
transmitted in violation of division (B) of this section may bring
a civil action against a person who transmitted that advertisement
or caused it to be transmitted. In that action, the recipient may
recover the following:

(1) One hundred dollars for each violation, not to exceed a
total of fifty thousand dollars;

(2) Reasonable attorney's fees, court costs, and other costs
of bringing the action.

(F) An electronic mail service provider whose authority or
policy has been contravened in violation of division (C) of this
section may bring a civil action against a person who transmitted
that advertisement or caused it to be transmitted. In that action,
the electronic mail service provider may recover the following:

(1)(a) Fifty dollars for each violation of division (C) of
this section, not to exceed fifty thousand dollars;

(b) If a violation of division (C) of this section is a
willful or knowing violation, the court may increase the amount
recoverable to an amount not to exceed five hundred thousand
dollars.

As Reported by the House Economic Development and Small Business Committee

(c) If a violation of division (C) of this section is 140
accompanied by a violation of division (H) of this section, there 141
shall be no limit on the amount that may be recovered pursuant to 142
this section. 143

(2) Reasonable attorney's fees, court costs, and other costs 144
of bringing the action. 145

(G) In addition to any recovery that is allowed under 146
divisions (E) or (F) of this section, the recipient of an 147
electronic mail advertisement transmitted in violation of division 148
(B) of this section or the electronic mail service provider of an 149
advertisement transmitted in violation of division (C) of this 150
section may apply to the court of common pleas of the county in 151
which the recipient resides or the service provider is located for 152
an order enjoining the person who transmitted or caused to be 153
transmitted that electronic mail advertisement from transmitting 154
or causing to be transmitted to the recipient any additional 155
electronic mail advertisement. 156

(H) No person shall use a computer, a computer network, a 157
computer program, or the computer services of an electronic mail 158
service provider with the intent to forge an originating address 159
or other routing information, in any manner, in connection with 160
the transmission of an electronic mail advertisement through or 161
into the network of an electronic mail service provider or its 162
subscribers. Each use of a computer, a computer network, a 163
computer program, or the computer services of an electronic mail 164
service provider in violation of this division constitutes a 165
separate offense. A person who violates this division is guilty of 166
forgery under section 2913.31 of the Revised Code. 167