

As Reported by the Senate Economic Development, Technology  
and Aerospace Committee

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Sub. S. B. No. 8

SENATORS Amstutz, Harris, Austria

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**A B I L L**

To enact section 2307.63 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 2307.63 of the Revised Code be 4  
enacted to read as follows: 5

**Sec. 2307.63.** (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  
includes electronic messages that are transmitted through a local, 18  
regional, or global computer network. 19

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(4) "Electronic mail advertisement" means electronic mail containing an advertisement. 20  
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(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. 22  
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(6) "Internet" has the same meaning as in section 341.42 of the Revised Code. 27  
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(7) "Originating address" means the string of characters used to specify the source of any electronic mail message. 29  
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(8) "Receiving address" means the string of characters used to specify a recipient. 31  
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(9) "Recipient" means a person who receives an electronic mail advertisement at any of the following addresses: 33  
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(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; 35  
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(b) A receiving address ordinarily accessed from a computer located within this state; 38  
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(c) A receiving address ordinarily accessed by a person domiciled within this state; 40  
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(d) Any other receiving address with respect to which the obligations imposed by this section can be imposed consistent with the United States Constitution. 42  
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(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: 45  
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(a) The person's name and complete residence or business address and the electronic mail address of the person transmitting the electronic mail advertisement; 50  
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(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 for a twelve-month period and a detailed procedure for declining to receive any additional electronic mail advertisements for that period. 53  
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(2) If the recipient of an electronic mail advertisement uses the procedure contained in the notice described in division (B)(1)(b) of this section to decline to receive any additional electronic mail advertisements for a twelve-month period, the person that transmitted or caused to be transmitted the original electronic mail advertisement, within a reasonable period of time, shall cease transmitting or causing to be transmitted to the recipient any additional electronic mail advertisements for a twelve-month period. 59  
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(C) No electronic mail service provider shall be liable for transmitting another person's electronic mail advertisement through its service in violation of the Revised Code, 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 the Revised Code. 68  
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(D) If a person transmits or causes to be transmitted an electronic mail advertisement in violation of division (B) of this section, the recipient of the electronic mail advertisement may bring a civil action against that person to enforce that division. The recipient may recover both of the following in the civil action: 75  
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(1) Actual damages or damages of one hundred dollars per 81  
electronic mail advertisement received in violation of division 82  
(B) of this section, whichever is greater; 83

(2) Reasonable attorney's fees, court costs, and other costs 84  
of bringing the action. 85

(E) In addition to any recovery that is allowed under 86  
division (D) of this section, the recipient of an electronic mail 87  
advertisement transmitted in violation of division (B) of this 88  
section may apply to the court of common pleas of the county in 89  
which the recipient resides for an order enjoining the person who 90  
transmitted or caused to be transmitted that electronic mail 91  
advertisement from transmitting or causing to be transmitted to 92  
the recipient any additional electronic mail advertisement within 93  
the applicable twelve-month period. 94

(F) A person does not violate division (B) of this section, 95  
is not liable to a recipient in a civil action under division (D) 96  
of this section, and is not subject to being enjoined under 97  
division (E) of this section if the person transmits or causes to 98  
be transmitted to the recipient an electronic mail advertisement 99  
when either of the following applies: 100

(1) The person has a preexisting business or personal 101  
relationship with the recipient. 102

(2) The recipient has expressly consented or has agreed as a 103  
condition of service to receive the electronic mail advertisement. 104

(G) No person shall use a computer, a computer network, a 105  
computer program, or the computer services of an electronic mail 106  
service provider with the intent to forge an originating address 107  
or other routing information, in any manner, in connection with 108  
the transmission of an electronic mail advertisement through or 109  
into the network of an electronic mail service provider or its 110  
subscribers. Each use of a computer, a computer network, a 111

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computer program, or the computer services of an electronic mail  
service provider in violation of this division constitutes a  
separate offense. A person who violates this division is guilty of  
forgery under section 2913.31 of the Revised Code.

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