

As Introduced

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H. B. No. 383

Representatives Walcher, D. Evans, Aslanides, Wagner, McGregor,
Reidelbach, Fessler, Price, Wolpert, Olman, Kearns, Setzer, Webster, Hagan,
Collier, Schaffer, Widener, Distel

A BILL

To amend section 2923.01 and to enact section 1
2913.421 of the Revised Code to prohibit a person 2
from transmitting multiple electronic mail 3
advertisements, falsifying the originating address 4
or other routing information in multiple 5
electronic mail advertisements, or falsifying 6
registration information for multiple electronic 7
mail accounts, and to prohibit unauthorized access 8
to a public computer to transmit multiple 9
electronic mail advertisements. 10

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

Section 1. That section 2923.01 be amended and section 11
2913.421 of the Revised Code be enacted to read as follows: 12

Sec. 2913.421. (A) As used in this section: 13

(1) "Advertisement" has the same meaning as in section 14
4931.55 of the Revised Code. 15

(2) "Computer," "computer network," and "computer system" 16
have the same meanings as in section 2913.01 of the Revised Code. 17

(3) "Domain name" means any alphanumeric designation that is 18
registered with or assigned by any domain name registrar, domain 19
name registry, or other domain name registration authority, and 20
that is included in an electronic mail message. 21

(4) "Electronic mail," "electronic mail advertisement," 22
"electronic mail service provider," "originating address," and 23
"recipient" have the same meanings as in section 2307.64 of the 24
Revised Code. 25

(5) "Electronic mail message" means each electronic mail 26
addressed to a discrete addressee. 27

(6) "Financial institution" has the same meaning as in 28
section 122.39 of the Revised Code. 29

(7) "Header information" means the source, destination, and 30
routing information attached to an electronic mail message, 31
including the originating domain name, the originating electronic 32
mail address, and technical information that authenticates the 33
sender of an electronic mail message for network security or 34
network management purposes. 35

(8) "Initiate the transmission" means to originate an 36
electronic mail message or to procure the origination of that 37
electronic mail message, regardless of whether the electronic mail 38
message reaches its intended recipients, and does not include the 39
actions of an electronic mail service provider used by another 40
person for the transmission, routing, relaying, handling, or 41
storing, through an automatic technical process, of an electronic 42
mail message for which another person has provided and selected 43
the recipient electronic mail address. 44

(9) "Internet" has the same meaning as in section 341.42 of 45
the Revised Code. 46

(10) "Internet protocol address" means the string of numbers 47

by which locations on the internet are identified by routers or
other computers connected to the internet.

(11) "Materially falsify" means to alter or conceal in a
manner that would impair the ability of a recipient of an
advertisement, an electronic mail service provider processing an
electronic mail message on behalf of a recipient, a person
alleging a violation of section 2913.421 of the Revised Code, or a
law enforcement agency to identify, locate, or respond to a person
that initiated an electronic mail message or to investigate an
alleged violation of section 2913.421 of the Revised Code.

(12) "Multiple" means more than ten electronic mail messages
during a twenty-four-hour period, more than one hundred electronic
mail messages during a thirty-day period, or more than one
thousand messages during a one-year period.

(13) "Protected computer" means any of the following:

(a) A computer exclusively for the use of state government or
a financial institution;

(b) A computer used by or for state government or a financial
institution when the conduct constituting the violation of
division (B) of this section affects that use by or for the state
government or financial institution;

(c) A computer that is used in intrastate or interstate
communication.

(B) No person, with regard to electronic mail advertisements
sent from or to a protected computer in this state, shall do any
of the following:

(1) Knowingly use a protected computer to relay or retransmit
multiple electronic mail advertisements, with the intent to
deceive or mislead recipients or any electronic mail service
provider, as to the origin of those advertisements;

(2) Knowingly and materially falsify header information in 78
multiple electronic mail advertisements and purposely initiate the 79
transmission of those advertisements; 80

(3) Knowingly register, using information that materially 81
falsifies the identity of the actual registrant, for five or more 82
electronic mail accounts or online user accounts or two or more 83
domain names and purposely initiate the transmission of multiple 84
electronic mail advertisements from one, or any combination, of 85
those accounts or domain names; 86

(4) Knowingly falsely represent the right to use five or more 87
internet protocol addresses, and purposely initiate the 88
transmission of multiple electronic mail advertisements from those 89
addresses. 90

(5) Knowingly access a protected computer without 91
authorization and purposely initiate the transmission of multiple 92
electronic mail advertisements from or through the protected 93
computer. 94

(C)(1) Whoever violates division (B)(1), (2), (3), or (4) of 95
this section is guilty of illegally transmitting multiple 96
electronic mail advertisements. Except as otherwise provided in 97
division (C)(2) or (4) of this section, illegally transmitting 98
multiple electronic mail advertisements is a felony of the fourth 99
degree. 100

(2) Illegally transmitting multiple electronic mail 101
advertisements is a felony of the third degree if any of the 102
following apply: 103

(a) Regarding a violation of division (B)(3) of this section, 104
the offender, using information that materially falsifies the 105
identity of the actual registrant, knowingly registers for twenty 106
or more electronic mail accounts or online user accounts or ten or 107
more domain names, and purposely initiates, or conspires to 108

initiate, the transmission of multiple electronic mail 109
advertisements from the accounts or domain names. 110

(b) Regarding any violation of division (B)(1), (2), (3), or 111
(4) of this section, the volume of electronic mail advertisements 112
the offender transmitted in committing the violation exceeds two 113
hundred and fifty during any twenty-four-hour period, two thousand 114
five hundred during any thirty-day period, or twenty-five thousand 115
during any one-year period. 116

(c) Regarding any violation of division (B)(1), (2), (3), or 117
(4) of this section, during any one-year period the aggregate loss 118
to the victim or victims of the violation is five hundred dollars 119
or more or during any one-year period the aggregate value of the 120
property or services obtained by any offender as a result of the 121
violation is five hundred dollars or more. 122

(d) Regarding any violation of division (B)(1), (2), (3), or 123
(4) of this section, the offender committed the violation with 124
three or more other persons with respect to whom the offender was 125
the organizer or leader of the activity that resulted in the 126
violation. 127

(3) Except as otherwise provided in division (C)(4) of this 128
section, whoever violates division (B)(5) of this section is 129
guilty of unauthorized access of a protected computer, a felony of 130
the third degree. 131

(4) Illegally transmitting multiple electronic mail 132
advertisements and unauthorized access of a protected computer in 133
violation of this section are felonies of the second degree if the 134
offender previously has been convicted of a violation of this 135
section or a violation of a law of another state or the United 136
States regarding the transmission of multiple electronic mail 137
advertisements or unauthorized access to a computer system, or if 138
the offender committed the violation of this section in the 139

furtherance of a felony.

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(D)(1) The attorney general, or any person engaged in the
business of an electronic mail service provider that is injured by
a violation of this section, may bring a civil action in an
appropriate court seeking relief from any person whose conduct
violated section 2913.421 of the Revised Code. The civil action
may be commenced at any time within two years of the date after
the act that is the basis of the civil action.

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(2) In a civil action brought by the attorney general
pursuant to division (D)(1) of this section, the court may award
temporary, preliminary, or permanent injunctive relief. The court
may also impose a civil penalty against the offender in an amount
not to exceed twenty-five thousand dollars for each day a
violation occurs, or not less than two dollars but not more than
eight dollars for each electronic mail advertisement that is
initiated in violation of this section, as the court considers
just.

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(3) In any civil action brought by a person engaged in the
business of an electronic mail service provider pursuant to
division (D)(1) of this section, the court may award temporary,
preliminary, or permanent injunctive relief, and also may award
damages in an amount equal to the greater of the following:

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(a) The sum of the actual damages incurred by the person
engaged in the business of an electronic mail service provider as
a result of the violation of this section, plus any receipts of
the offender that are attributable to the violation of this
section and that were not taken into account in computing actual
damages;

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(b) Statutory damages in an amount not exceeding twenty-five
thousand dollars for each day a violation occurs, or not less than
two dollars but not more than eight dollars for each electronic

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mail advertisement initiated in violation of this section. 171

(E) Any equipment, software, or other technology of a person 172
who violates this section that is used or intended to be used in 173
the commission of a violation of this section, and any real or 174
personal property that constitutes or is traceable to the gross 175
proceeds obtained from the commission of a violation of this 176
section, is contraband and is subject to seizure and forfeiture 177
pursuant to sections 2933.42 and 2933.43 of the Revised Code. 178

(F) The attorney general may bring a civil action, pursuant 179
to the CAN-SPAM Act of 2003, Pub. L. No. 108-187, on behalf of the 180
residents of the state in a district court of the United States 181
that has jurisdiction for a violation of this section or a 182
violation of Pub. L. No. 108-187. 183

Sec. 2923.01. (A) No person, with purpose to commit or to 184
promote or facilitate the commission of aggravated murder, murder, 185
kidnapping, compelling prostitution, promoting prostitution, 186
aggravated arson, arson, aggravated robbery, robbery, aggravated 187
burglary, burglary, engaging in a pattern of corrupt activity, 188
corrupting another with drugs, a felony drug trafficking, 189
manufacturing, processing, or possession offense, theft of drugs, 190
or illegal processing of drug documents, the commission of a 191
felony offense of unauthorized use of a vehicle, unauthorized 192
access of a protected computer, illegally transmitting multiple 193
electronic mail advertisements, or the commission of a violation 194
of any provision of Chapter 3734. of the Revised Code, other than 195
section 3734.18 of the Revised Code, that relates to hazardous 196
wastes, shall do either of the following: 197

(1) With another person or persons, plan or aid in planning 198
the commission of any of the specified offenses; 199

(2) Agree with another person or persons that one or more of 200

them will engage in conduct that facilitates the commission of any 201
of the specified offenses. 202

(B) No person shall be convicted of conspiracy unless a 203
substantial overt act in furtherance of the conspiracy is alleged 204
and proved to have been done by the accused or a person with whom 205
the accused conspired, subsequent to the accused's entrance into 206
the conspiracy. For purposes of this section, an overt act is 207
substantial when it is of a character that manifests a purpose on 208
the part of the actor that the object of the conspiracy should be 209
completed. 210

(C) When the offender knows or has reasonable cause to 211
believe that a person with whom the offender conspires also has 212
conspired or is conspiring with another to commit the same 213
offense, the offender is guilty of conspiring with that other 214
person, even though the other person's identity may be unknown to 215
the offender. 216

(D) It is no defense to a charge under this section that, in 217
retrospect, commission of the offense that was the object of the 218
conspiracy was impossible under the circumstances. 219

(E) A conspiracy terminates when the offense or offenses that 220
are its objects are committed or when it is abandoned by all 221
conspirators. In the absence of abandonment, it is no defense to a 222
charge under this section that no offense that was the object of 223
the conspiracy was committed. 224

(F) A person who conspires to commit more than one offense is 225
guilty of only one conspiracy, when the offenses are the object of 226
the same agreement or continuous conspiratorial relationship. 227

(G) When a person is convicted of committing or attempting to 228
commit a specific offense or of complicity in the commission of or 229
attempt to commit the specific offense, the person shall not be 230
convicted of conspiracy involving the same offense. 231

(H)(1) No person shall be convicted of conspiracy upon the 232
testimony of a person with whom the defendant conspired, 233
unsupported by other evidence. 234

(2) If a person with whom the defendant allegedly has 235
conspired testifies against the defendant in a case in which the 236
defendant is charged with conspiracy and if the testimony is 237
supported by other evidence, the court, when it charges the jury, 238
shall state substantially the following: 239

"The testimony of an accomplice that is supported by other 240
evidence does not become inadmissible because of the accomplice's 241
complicity, moral turpitude, or self-interest, but the admitted or 242
claimed complicity of a witness may affect the witness' 243
credibility and make the witness' testimony subject to grave 244
suspicion, and require that it be weighed with great caution. 245

It is for you, as jurors, in the light of all the facts 246
presented to you from the witness stand, to evaluate such 247
testimony and to determine its quality and worth or its lack of 248
quality and worth." 249

(3) "Conspiracy," as used in division (H)(1) of this section, 250
does not include any conspiracy that results in an attempt to 251
commit an offense or in the commission of an offense. 252

(I) The following are affirmative defenses to a charge of 253
conspiracy: 254

(1) After conspiring to commit an offense, the actor thwarted 255
the success of the conspiracy under circumstances manifesting a 256
complete and voluntary renunciation of the actor's criminal 257
purpose. 258

(2) After conspiring to commit an offense, the actor 259
abandoned the conspiracy prior to the commission of or attempt to 260
commit any offense that was the object of the conspiracy, either 261

by advising all other conspirators of the actor's abandonment, or 262
by informing any law enforcement authority of the existence of the 263
conspiracy and of the actor's participation in the conspiracy. 264

(J) Whoever violates this section is guilty of conspiracy, 265
which is one of the following: 266

(1) A felony of the first degree, when one of the objects of 267
the conspiracy is aggravated murder, murder, or an offense for 268
which the maximum penalty is imprisonment for life; 269

(2) A felony of the next lesser degree than the most serious 270
offense that is the object of the conspiracy, when the most 271
serious offense that is the object of the conspiracy is a felony 272
of the first, second, third, or fourth degree; 273

(3) A felony punishable by a fine of not more than 274
twenty-five thousand dollars or imprisonment for not more than 275
eighteen months, or both, when the offense that is the object of 276
the conspiracy is a violation of any provision of Chapter 3734. of 277
the Revised Code, other than section 3734.18 of the Revised Code, 278
that relates to hazardous wastes; 279

(4) A misdemeanor of the first degree, when the most serious 280
offense that is the object of the conspiracy is a felony of the 281
fifth degree. 282

(K) This section does not define a separate conspiracy 283
offense or penalty where conspiracy is defined as an offense by 284
one or more sections of the Revised Code, other than this section. 285
In such a case, however: 286

(1) With respect to the offense specified as the object of 287
the conspiracy in the other section or sections, division (A) of 288
this section defines the voluntary act or acts and culpable mental 289
state necessary to constitute the conspiracy; 290

(2) Divisions (B) to (I) of this section are incorporated by 291

reference in the conspiracy offense defined by the other section 292
or sections of the Revised Code. 293

(L)(1) In addition to the penalties that otherwise are 294
imposed for conspiracy, a person who is found guilty of conspiracy 295
to engage in a pattern of corrupt activity is subject to divisions 296
(B)(2), (3), (4), and (5) of section 2923.32 of the Revised Code. 297

(2) If a person is convicted of or pleads guilty to 298
conspiracy and if the most serious offense that is the object of 299
the conspiracy is a felony drug trafficking, manufacturing, 300
processing, or possession offense, in addition to the penalties or 301
sanctions that may be imposed for the conspiracy under division 302
(J)(2) or (4) of this section and Chapter 2929. of the Revised 303
Code, both of the following apply: 304

(a) The provisions of divisions (D), (F), and (G) of section 305
2925.03, division (D) of section 2925.04, division (D) of section 306
2925.05, division (D) of section 2925.06, and division (E) of 307
section 2925.11 of the Revised Code that pertain to mandatory and 308
additional fines, driver's or commercial driver's license or 309
permit suspensions, and professionally licensed persons and that 310
would apply under the appropriate provisions of those divisions to 311
a person who is convicted of or pleads guilty to the felony drug 312
trafficking, manufacturing, processing, or possession offense that 313
is the most serious offense that is the basis of the conspiracy 314
shall apply to the person who is convicted of or pleads guilty to 315
the conspiracy as if the person had been convicted of or pleaded 316
guilty to the felony drug trafficking, manufacturing, processing, 317
or possession offense that is the most serious offense that is the 318
basis of the conspiracy. 319

(b) The court that imposes sentence upon the person who is 320
convicted of or pleads guilty to the conspiracy shall comply with 321
the provisions identified as being applicable under division 322
(L)(2) of this section, in addition to any other penalty or 323

sanction that it imposes for the conspiracy under division (J)(2) 324
or (4) of this section and Chapter 2929. of the Revised Code. 325

(M) As used in this section: 326

(1) "Felony drug trafficking, manufacturing, processing, or 327
possession offense" means any of the following that is a felony: 328

(a) A violation of section 2925.03, 2925.04, 2925.05, or 329
2925.06 of the Revised Code; 330

(b) A violation of section 2925.11 of the Revised Code that 331
is not a minor drug possession offense. 332

(2) "Minor drug possession offense" has the same meaning as 333
in section 2925.01 of the Revised Code. 334

Section 2. That existing section 2923.01 of the Revised Code 335
is hereby repealed. 336