

**As Reported by the Senate Ways and Means and Economic
Development Committee**

**125th General Assembly
Regular Session
2003-2004**

Sub. H. B. No. 383

**Representatives Walcher, D. Evans, Aslanides, Wagner, McGregor,
Reidelbach, Fessler, Price, Wolpert, Olman, Kearns, Setzer, Webster, Hagan,
Collier, Schaffer, Widener, Distel, Barrett, Beatty, Carano, Carmichael,
Chandler, Cirelli, DeGeeter, Domenick, C. Evans, Flowers, Gilb, Harwood,
Hollister, Hughes, Jerse, Latta, Mason, Miller, Niehaus, Otterman, S. Patton,
Perry, Reinhard, Schmidt, Schneider, Sferra, Slaby, G. Smith, S. Smith,
D. Stewart, J. Stewart, Taylor, White, Wilson, Woodard
Senator Schuler**

—

A B I L L

To amend section 2923.01 and to enact section	1
2913.421 of the Revised Code to prohibit a person	2
from transmitting multiple commercial electronic	3
mail messages, falsifying routing information in	4
those messages, falsifying registration	5
information for multiple electronic mail accounts,	6
or falsifying the right to use five or more	7
internet protocol addresses, and to prohibit	8
unauthorized access to a computer to transmit	9
multiple commercial electronic mail messages.	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

<u>Sec. 2913.421. (A) As used in this section:</u>	13
<u>(1) "Computer," "computer network," and "computer system"</u>	14
<u>have the same meanings as in section 2913.01 of the Revised Code.</u>	15
<u>(2) "Commercial electronic mail message" means any electronic</u>	16
<u>mail message the primary purpose of which is the commercial</u>	17
<u>advertisement or promotion of a commercial product or service,</u>	18
<u>including content on an internet web site operated for a</u>	19
<u>commercial purpose, but does not include a transactional or</u>	20
<u>relationship message. The inclusion of a reference to a commercial</u>	21
<u>entity or a link to the web site of a commercial entity does not,</u>	22
<u>by itself, cause that message to be treated as a commercial</u>	23
<u>electronic mail message for the purpose of this section, if the</u>	24
<u>contents or circumstances of the message indicate a primary</u>	25
<u>purpose other than commercial advertisement or promotion of a</u>	26
<u>commercial product or service.</u>	27
<u>(3) "Domain name" means any alphanumeric designation that is</u>	28
<u>registered with or assigned by any domain name registrar, domain</u>	29
<u>name registry, or other domain name registration authority as part</u>	30
<u>of an electronic address on the internet.</u>	31
<u>(4) "Electronic mail," "originating address," and "receiving</u>	32
<u>address" have the same meanings as in section 2307.64 of the</u>	33
<u>Revised Code.</u>	34
<u>(5) "Electronic mail message" means each electronic mail</u>	35
<u>addressed to a discrete addressee.</u>	36
<u>(6) "Electronic mail service provider" means any person,</u>	37
<u>including an internet service provider, that is an intermediary in</u>	38
<u>sending and receiving electronic mail and that provides to the</u>	39
<u>public electronic mail accounts or online user accounts from which</u>	40
<u>electronic mail may be sent.</u>	41
<u>(7) "Header information" means the source, destination, and</u>	42

routing information attached to an electronic mail message,
including the originating domain name, the originating address,
and technical information that authenticates the sender of an
electronic mail message for computer network security or computer
network management purposes.

43
44
45
46
47

(8) "Initiate the transmission" or "initiated" means to
originate or transmit a commercial electronic mail message or to
procure the origination or transmission of that message,
regardless of whether the message reaches its intended recipients,
but does not include actions that constitute routine conveyance of
such message.

48
49
50
51
52
53

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

54
55

(10) "Internet protocol address" means the string of numbers
by which locations on the internet are identified by routers or
other computers connected to the internet.

56
57
58

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

59
60
61
62
63
64
65
66

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

67
68
69
70
71

(13) "Recipient" means a person who receives a commercial
electronic mail message at any one of the following receiving

72
73

<u>addresses:</u>	74
<u>(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;</u>	75 76 77
<u>(b) A receiving address ordinarily accessed from a computer located within this state or by a person domiciled within this state;</u>	78 79 80
<u>(c) Any other receiving address with respect to which this section can be imposed consistent with the United States Constitution.</u>	81 82 83
<u>(14) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automated technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.</u>	84 85 86 87
<u>(15) "Transactional or relationship message" means an electronic mail message the primary purpose of which is to do any of the following:</u>	88 89 90
<u>(a) Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;</u>	91 92 93
<u>(b) Provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;</u>	94 95 96
<u>(c) Provide notification concerning a change in the terms or features of; a change in the recipient's standing or status with respect to; or, at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;</u>	97 98 99 100 101 102 103

(d) Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; 104
105
106

(e) Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender. 107
108
109
110

(B) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall do any of the following: 111
112
113

(1) Knowingly use a computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients or any electronic mail service provider, as to the origin of those messages; 114
115
116
117

(2) Knowingly and materially falsify header information in multiple commercial electronic mail messages and purposely initiate the transmission of those messages; 118
119
120

(3) Knowingly register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names and purposely initiate the transmission of multiple commercial electronic mail messages from one, or any combination, of those accounts or domain names; 121
122
123
124
125
126

(4) Knowingly falsely represent the right to use five or more internet protocol addresses, and purposely initiate the transmission of multiple commercial electronic mail messages from those addresses. 127
128
129
130

(C)(1) Whoever violates division (B) of this section is guilty of illegally transmitting multiple commercial electronic mail messages. Except as otherwise provided in division (C)(2) or 131
132
133

(E) of this section, illegally transmitting multiple commercial 134
electronic mail messages is a felony of the fifth degree. 135

(2) Illegally transmitting multiple commercial electronic 136
mail messages is a felony of the fourth degree if any of the 137
following apply: 138

(a) Regarding a violation of division (B)(3) of this section, 139
the offender, using information that materially falsifies the 140
identity of the actual registrant, knowingly registers for twenty 141
or more electronic mail accounts or online user accounts or ten or 142
more domain names, and purposely initiates, or conspires to 143
initiate, the transmission of multiple commercial electronic mail 144
messages from the accounts or domain names. 145

(b) Regarding any violation of division (B) of this section, 146
the volume of commercial electronic mail messages the offender 147
transmitted in committing the violation exceeds two hundred and 148
fifty during any twenty-four-hour period, two thousand five 149
hundred during any thirty-day period, or twenty-five thousand 150
during any one-year period. 151

(c) Regarding any violation of division (B) of this section, 152
during any one-year period the aggregate loss to the victim or 153
victims of the violation is five hundred dollars or more, or 154
during any one-year period the aggregate value of the property or 155
services obtained by any offender as a result of the violation is 156
five hundred dollars or more. 157

(d) Regarding any violation of division (B) of this section, 158
the offender committed the violation with three or more other 159
persons with respect to whom the offender was the organizer or 160
leader of the activity that resulted in the violation. 161

(e) Regarding any violation of division (B) of this section, 162
the offender knowingly assisted in the violation through the 163
provision or selection of electronic mail addresses to which the 164

commercial electronic mail message was transmitted, if that 165
offender knew that the electronic mail addresses of the recipients 166
were obtained using an automated means from an internet web site 167
or proprietary online service operated by another person, and that 168
web site or online service included, at the time the electronic 169
mail addresses were obtained, a notice stating that the operator 170
of that web site or online service will not transfer addresses 171
maintained by that web site or online service to any other party 172
for the purposes of initiating the transmission of, or enabling 173
others to initiate the transmission of, electronic mail messages. 174

(f) Regarding any violation of division (B) of this section, 175
the offender knowingly assisted in the violation through the 176
provision or selection of electronic mail addresses of the 177
recipients obtained using an automated means that generates 178
possible electronic mail addresses by combining names, letters, or 179
numbers into numerous permutations. 180

(D)(1) No person, with regard to commercial electronic mail 181
messages sent from or to a computer in this state, shall knowingly 182
access a computer without authorization and purposely initiate the 183
transmission of multiple commercial electronic mail messages from 184
or through the computer. 185

(2) Except as otherwise provided in division (E) of this 186
section, whoever violates division (D)(1) of this section is 187
guilty of unauthorized access of a computer, a felony of the 188
fourth degree. 189

(E) Illegally transmitting multiple commercial electronic 190
mail messages and unauthorized access of a computer in violation 191
of this section are felonies of the third degree if the offender 192
previously has been convicted of a violation of this section, or a 193
violation of a law of another state or the United States regarding 194
the transmission of electronic mail messages or unauthorized 195

access to a computer, or if the offender committed the violation 196
of this section in the furtherance of a felony. 197

(F)(1) The attorney general or an electronic mail service 198
provider that is injured by a violation of this section may bring 199
a civil action in an appropriate court of common pleas of this 200
state seeking relief from any person whose conduct violated this 201
section. The civil action may be commenced at any time within one 202
year of the date after the act that is the basis of the civil 203
action. 204

(2) In a civil action brought by the attorney general 205
pursuant to division (F)(1) of this section for a violation of 206
this section, the court may award temporary, preliminary, or 207
permanent injunctive relief. The court also may impose a civil 208
penalty against the offender, as the court considers just, in an 209
amount that is the lesser of: (a) twenty-five thousand dollars for 210
each day a violation occurs, or (b) not less than two dollars but 211
not more than eight dollars for each commercial electronic mail 212
message initiated in violation of this section. 213

(3) In a civil action brought by an electronic mail service 214
provider pursuant to division (F)(1) of this section for a 215
violation of this section, the court may award temporary, 216
preliminary, or permanent injunctive relief, and also may award 217
damages in an amount equal to the greater of the following: 218

(a) The sum of the actual damages incurred by the electronic 219
mail service provider as a result of a violation of this section, 220
plus any receipts of the offender that are attributable to a 221
violation of this section and that were not taken into account in 222
computing actual damages; 223

(b) Statutory damages, as the court considers just, in an 224
amount that is the lesser of: (i) twenty-five thousand dollars for 225
each day a violation occurs, or (ii) not less than two dollars but 226

not more than eight dollars for each commercial electronic mail 227
message initiated in violation of this section. 228

(4) In assessing damages awarded under division (F)(3) of 229
this section, the court may consider whether the offender has 230
established and implemented, with due care, commercially 231
reasonable practices and procedures designed to effectively 232
prevent the violation, or the violation occurred despite 233
commercially reasonable efforts to maintain the practices and 234
procedures established. 235

(G) Any equipment, software, or other technology of a person 236
who violates this section that is used or intended to be used in 237
the commission of a violation of this section, and any real or 238
personal property that constitutes or is traceable to the gross 239
proceeds obtained from the commission of a violation of this 240
section, is contraband and is subject to seizure and forfeiture 241
pursuant to sections 2933.42 and 2933.43 of the Revised Code. 242

(H) The attorney general may bring a civil action, pursuant 243
to the "CAN-SPAM Act of 2003," Pub. L. No. 108-187, 117 Stat. 244
2699, 15 U.S.C. 7701 et seq., on behalf of the residents of the 245
state in a district court of the United States that has 246
jurisdiction for a violation of the CAN-SPAM Act of 2003, but the 247
attorney general shall not bring a civil action under both this 248
division and division (F) of this section. If a federal court 249
dismisses a civil action brought under this division for reasons 250
other than upon the merits, a civil action may be brought under 251
division (F) of this section in the appropriate court of common 252
pleas of this state. 253

(I) Nothing in this section shall be construed: 254

(1) To require an electronic mail service provider to block, 255
transmit, route, relay, handle, or store certain types of 256
electronic mail messages; 257

(2) To prevent or limit, in any way, an electronic mail service provider from adopting a policy regarding electronic mail, including a policy of declining to transmit certain types of electronic mail messages, or from enforcing such policy through technical means, through contract, or pursuant to any remedy available under any other federal, state, or local criminal or civil law; 258
259
260
261
262
263
264

(3) To render lawful any policy adopted under division (I)(2) of this section that is unlawful under any other law. 265
266

Sec. 2923.01. (A) No person, with purpose to commit or to promote or facilitate the commission of aggravated murder, murder, kidnapping, compelling prostitution, promoting prostitution, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, engaging in a pattern of corrupt activity, corrupting another with drugs, a felony drug trafficking, manufacturing, processing, or possession offense, theft of drugs, or illegal processing of drug documents, the commission of a felony offense of unauthorized use of a vehicle, illegally transmitting multiple commercial electronic mail messages or unauthorized access of a computer in violation of section 2923.421 of the Revised Code, or the commission of a violation of any provision of Chapter 3734. of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes, shall do either of the following: 267
268
269
270
271
272
273
274
275
276
277
278
279
280
281

(1) With another person or persons, plan or aid in planning the commission of any of the specified offenses; 282
283

(2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the commission of any of the specified offenses. 284
285
286

(B) No person shall be convicted of conspiracy unless a 287

substantial overt act in furtherance of the conspiracy is alleged 288
and proved to have been done by the accused or a person with whom 289
the accused conspired, subsequent to the accused's entrance into 290
the conspiracy. For purposes of this section, an overt act is 291
substantial when it is of a character that manifests a purpose on 292
the part of the actor that the object of the conspiracy should be 293
completed. 294

(C) When the offender knows or has reasonable cause to 295
believe that a person with whom the offender conspires also has 296
conspired or is conspiring with another to commit the same 297
offense, the offender is guilty of conspiring with that other 298
person, even though the other person's identity may be unknown to 299
the offender. 300

(D) It is no defense to a charge under this section that, in 301
retrospect, commission of the offense that was the object of the 302
conspiracy was impossible under the circumstances. 303

(E) A conspiracy terminates when the offense or offenses that 304
are its objects are committed or when it is abandoned by all 305
conspirators. In the absence of abandonment, it is no defense to a 306
charge under this section that no offense that was the object of 307
the conspiracy was committed. 308

(F) A person who conspires to commit more than one offense is 309
guilty of only one conspiracy, when the offenses are the object of 310
the same agreement or continuous conspiratorial relationship. 311

(G) When a person is convicted of committing or attempting to 312
commit a specific offense or of complicity in the commission of or 313
attempt to commit the specific offense, the person shall not be 314
convicted of conspiracy involving the same offense. 315

(H)(1) No person shall be convicted of conspiracy upon the 316
testimony of a person with whom the defendant conspired, 317
unsupported by other evidence. 318

(2) If a person with whom the defendant allegedly has 319
conspired testifies against the defendant in a case in which the 320
defendant is charged with conspiracy and if the testimony is 321
supported by other evidence, the court, when it charges the jury, 322
shall state substantially the following: 323

"The testimony of an accomplice that is supported by other 324
evidence does not become inadmissible because of the accomplice's 325
complicity, moral turpitude, or self-interest, but the admitted or 326
claimed complicity of a witness may affect the witness' 327
credibility and make the witness' testimony subject to grave 328
suspicion, and require that it be weighed with great caution. 329

It is for you, as jurors, in the light of all the facts 330
presented to you from the witness stand, to evaluate such 331
testimony and to determine its quality and worth or its lack of 332
quality and worth." 333

(3) "Conspiracy," as used in division (H)(1) of this section, 334
does not include any conspiracy that results in an attempt to 335
commit an offense or in the commission of an offense. 336

(I) The following are affirmative defenses to a charge of 337
conspiracy: 338

(1) After conspiring to commit an offense, the actor thwarted 339
the success of the conspiracy under circumstances manifesting a 340
complete and voluntary renunciation of the actor's criminal 341
purpose. 342

(2) After conspiring to commit an offense, the actor 343
abandoned the conspiracy prior to the commission of or attempt to 344
commit any offense that was the object of the conspiracy, either 345
by advising all other conspirators of the actor's abandonment, or 346
by informing any law enforcement authority of the existence of the 347
conspiracy and of the actor's participation in the conspiracy. 348

(J) Whoever violates this section is guilty of conspiracy, 349
which is one of the following: 350

(1) A felony of the first degree, when one of the objects of 351
the conspiracy is aggravated murder, murder, or an offense for 352
which the maximum penalty is imprisonment for life; 353

(2) A felony of the next lesser degree than the most serious 354
offense that is the object of the conspiracy, when the most 355
serious offense that is the object of the conspiracy is a felony 356
of the first, second, third, or fourth degree; 357

(3) A felony punishable by a fine of not more than 358
twenty-five thousand dollars or imprisonment for not more than 359
eighteen months, or both, when the offense that is the object of 360
the conspiracy is a violation of any provision of Chapter 3734. of 361
the Revised Code, other than section 3734.18 of the Revised Code, 362
that relates to hazardous wastes; 363

(4) A misdemeanor of the first degree, when the most serious 364
offense that is the object of the conspiracy is a felony of the 365
fifth degree. 366

(K) This section does not define a separate conspiracy 367
offense or penalty where conspiracy is defined as an offense by 368
one or more sections of the Revised Code, other than this section. 369
In such a case, however: 370

(1) With respect to the offense specified as the object of 371
the conspiracy in the other section or sections, division (A) of 372
this section defines the voluntary act or acts and culpable mental 373
state necessary to constitute the conspiracy; 374

(2) Divisions (B) to (I) of this section are incorporated by 375
reference in the conspiracy offense defined by the other section 376
or sections of the Revised Code. 377

(L)(1) In addition to the penalties that otherwise are 378

imposed for conspiracy, a person who is found guilty of conspiracy 379
to engage in a pattern of corrupt activity is subject to divisions 380
(B)(2), (3), (4), and (5) of section 2923.32 of the Revised Code. 381

(2) If a person is convicted of or pleads guilty to 382
conspiracy and if the most serious offense that is the object of 383
the conspiracy is a felony drug trafficking, manufacturing, 384
processing, or possession offense, in addition to the penalties or 385
sanctions that may be imposed for the conspiracy under division 386
(J)(2) or (4) of this section and Chapter 2929. of the Revised 387
Code, both of the following apply: 388

(a) The provisions of divisions (D), (F), and (G) of section 389
2925.03, division (D) of section 2925.04, division (D) of section 390
2925.05, division (D) of section 2925.06, and division (E) of 391
section 2925.11 of the Revised Code that pertain to mandatory and 392
additional fines, driver's or commercial driver's license or 393
permit suspensions, and professionally licensed persons and that 394
would apply under the appropriate provisions of those divisions to 395
a person who is convicted of or pleads guilty to the felony drug 396
trafficking, manufacturing, processing, or possession offense that 397
is the most serious offense that is the basis of the conspiracy 398
shall apply to the person who is convicted of or pleads guilty to 399
the conspiracy as if the person had been convicted of or pleaded 400
guilty to the felony drug trafficking, manufacturing, processing, 401
or possession offense that is the most serious offense that is the 402
basis of the conspiracy. 403

(b) The court that imposes sentence upon the person who is 404
convicted of or pleads guilty to the conspiracy shall comply with 405
the provisions identified as being applicable under division 406
(L)(2) of this section, in addition to any other penalty or 407
sanction that it imposes for the conspiracy under division (J)(2) 408
or (4) of this section and Chapter 2929. of the Revised Code. 409

(M) As used in this section:	410
(1) "Felony drug trafficking, manufacturing, processing, or possession offense" means any of the following that is a felony:	411
(a) A violation of section 2925.03, 2925.04, 2925.05, or 2925.06 of the Revised Code;	412
(b) A violation of section 2925.11 of the Revised Code that is not a minor drug possession offense.	413
(2) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.	414
Section 2. That existing section 2923.01 of the Revised Code is hereby repealed.	415
	416
	417
	418
	419
	420