



S.B. 8

124th General Assembly
(As Introduced)

Sen. Amstutz

BILL SUMMARY

- Generally prohibits using a computer, a computer network, or the computer services of an e-mail service provider to transmit an e-mail advertisement in contravention of the authority granted by, or in violation of the policies set by, an e-mail service provider, and prescribes associated civil damages and injunctive relief remedies.
- Generally prohibits transmitting an e-mail advertisement without including the transmitter's name and address and a notice that the recipient may decline to receive further e-mail advertisements by following a specified procedure, and prescribes associated civil damages and injunctive relief remedies.
- Creates the criminal offenses of "using a computer program or computer software to forge an originating address" (a felony of the fifth degree), and of "distributing a computer program or computer software used to forge an originating address" (a misdemeanor of the fourth degree), both of which also pertain to e-mail advertisements.

CONTENT AND OPERATION

Overview

The bill enacts several prohibitions or requirements that focus on the transmission of "electronic mail advertisements" (hereafter, e-mail advertisements).¹ Some of the prohibitions or requirements have associated civil enforcement remedies; others have associated criminal penalties.

¹ *The meanings of this and other key computer-related terms defined in the bill are set forth under "**Definitions**," below. Terms used in the bill with existing statutory definitions are explained in the **COMMENT**.*

Prohibitions and requirements with associated civil enforcement remedies

E-mail advertisements in contravention of authority or policies

The *first prohibition* is against a person using a computer, a computer network, or the computer services of an e-mail service provider to transmit an e-mail advertisement in contravention of the authority granted by, or in violation of the policies set by, the e-mail service provider. This prohibition is not violated, however (1) by a person (including an interactive computer service) that requires users, as a condition of providing them with access to a computer network, to receive unsolicited advertisements, (2) by e-mail advertisements that the recipient accesses from an electronic bulletin board, or (3) by the transmission of an e-mail advertisement from an organization or similar entity to its members. This prohibition may be enforced by the civil action remedies mentioned below. (Sec. 2913.042(B).)

E-mail advertisement required information

The bill generally *requires* certain information to be included with an e-mail advertisement. A person that transmits or causes to be transmitted to a recipient an e-mail advertisement must clearly and conspicuously provide the recipient at the same time with the following information concerning the advertisement (sec. 2913.042(C)(1)):

(1) The individual's or business's name and complete residence or business address, and the e-mail address of the person transmitting the e-mail advertisement;

(2) A notice that the recipient may decline to receive from the person transmitting the e-mail advertisement any additional e-mail advertisements. This notice also must include a detailed procedure for declining to receive further e-mail advertisements.

The bill specifies that, if a recipient uses the procedure mentioned above to decline to receive further e-mail advertisements, the person that transmitted the original e-mail advertisement must not transmit to the recipient any additional e-mail advertisements. This specification seems to be a *second prohibition* enacted by the bill in connection with the transmission of e-mail advertisements. (Sec. 2913.042(C)(2).)

It appears that the bill's e-mail advertisement required information provisions and the related second prohibition mentioned above are not violated, however (1) if any of the three non-violation circumstances listed under "**E-mail advertisements in contravention of authority or policies**," above applies or (2) if a

person transmits or causes to be transmitted to a recipient an e-mail advertisement and (a) the person has a preexisting business or personal relationship with the recipient or (b) the recipient has expressly consented to receive the e-mail advertisement from the person (sec. 2913.042(B), (C)(1), and (I)).

The bill's e-mail advertisement required information provisions and the related second prohibition mentioned above may be enforced by the civil action remedies mentioned below.

Civil actions

Under the bill, if a person violates the first prohibition mentioned above, the e-mail advertisement required information provisions mentioned above, or the second prohibition mentioned above related to those provisions, the recipient of the e-mail advertisement transmitted in violation of either prohibition or the requirements generally may bring a civil action against the person who transmitted the e-mail advertisement to enforce the prohibition or requirements violated. The recipient may *recover* in the civil action *both* of the following: (1) actual damages or damages of \$10 per e-mail advertisement received in violation of the prohibition or requirements, whichever is greater, and (2) attorney's fees, court costs, and other costs of bringing the action. (Sec. 2913.042(G).) In addition to these forms of recovery, the recipient may apply to the court of common pleas in the county where the recipient resides for an *order enjoining* the person who transmitted that e-mail advertisement from transmitting to the recipient any other e-mail advertisement (sec. 2913.042(H)).

The bill provides a few exceptions to the aforementioned civil remedies. A person who transmits an e-mail advertisement that technically violates the bill's prohibitions or requirements mentioned above is not liable for *civil damages* if the person has a preexisting business or personal relationship with the recipient or if the recipient has expressly consented to receive the item of e-mail from the person. (Sec. 2913.042(I).)

Forgery of originating address: criminal prohibitions

The bill's *third prohibition* prohibits a person from using a computer, a computer program, a computer network, or the computer services of an e-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 e-mail advertisement through or into the network of an e-mail service provider or its subscribers. A violation of this prohibition constitutes the criminal offense of "using a computer program or computer software to forge an originating address," which is a felony of the fifth degree. (Sec. 2913.042(D) and (J).)

The bill's related *fourth prohibition* prohibits a person from knowingly giving, selling, or otherwise distributing or possessing with the intent to sell, give, or distribute a computer program or computer software that facilitates or enables the forgery of the originating address or other routing information for the purpose of sending an e-mail advertisement through or into the facilities of an e-mail service provider or its subscribers. A violation of this prohibition constitutes the criminal offense of "distributing a computer program or computer software used to forge an originating address," which is a misdemeanor of the fourth degree. (Sec. 2913.042(E) and (K).)

The bill provides that each use or distribution of a computer program or computer software in violation of either of the latter criminal prohibitions is a separate offense (sec. 2913.042(L)).

Nonliability of Internet service providers

The bill provides that an Internet service provider is not liable for transmitting another person's e-mail advertisement through its network. Additionally, an Internet service provider is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any e-mail advertisement that it believes is, or will be sent, in violation of its policies. The nonliability covered by these provisions appears to be nonliability for criminal prosecution as well as nonliability in a civil action. On a related note, the bill allows an Internet service provider to disconnect or terminate the service of any person that is in violation of the Internet service provider's policies. (Sec. 2913.042(F).)

Definitions

The bill defines the following terms for its provisions (sec. 2913.042(A)):

(1) "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.

(2) "Electronic mail advertisement" means an electronic 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.

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

(4) "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.

(5) "Originating address" means the string of characters used to specify the source of any e-mail message.

(6) "Receiving address" means the string of characters used to specify the recipient of any e-mail message.

(7) "Recipient" means a person who receives an item of e-mail or an e-mail advertisement.

COMMENT

The bill uses certain computer-related terms of existing law as follows (sec. 2913.042(A)(1) and (2)):

"Computer," as defined in R.C. 2913.01(M), means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature.

"Computer network," as defined in R.C. 2913.01(O), means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

"Computer program," as defined by R.C. 2913.01(P), means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data.

"Computer software," as defined by R.C. 2913.01(Q), means computer programs, procedures, and other documentation associated with the operation of a computer system.

"Advertisement," as defined by R.C. 4931.55, means a message or material intended to cause the sale of realty, goods, or services.

HISTORY

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