



Sub. S.B. 8*

124th General Assembly

(As Reported by S. Economic Development, Technology, and Aerospace)

Sen. Amstutz

BILL SUMMARY

- Generally requires an e-mail advertisement to include the transmitter's name and address and a notice that the recipient may decline to receive further e-mail advertisements for a 12-month period by following a specified procedure, and prescribes associated civil damages and injunctive relief remedies.
- Makes using a computer, a computer network a computer program, or the computer services of an e-mail service provider, with the intent to forge an originating address or other routing information, in connection with an e-mail advertisement's transmission through or into an e-mail service provider's or its subscribers' network another manner of committing "forgery."

CONTENT AND OPERATION

Overview

The bill enacts requirements and a prohibition that focus on the transmission of "electronic mail advertisements" (hereafter, e-mail advertisements).¹ The requirements and prohibition have associated civil enforcement remedies or criminal penalties.

* *This analysis was prepared before the report of the Senate Economic Development, Technology, and Aerospace Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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**.*

Requirements with associated civil enforcement remedies

E-mail advertisement required information and cessation procedure

The bill generally requires certain information to be included with an e-mail advertisement. A person that transmits or causes to be transmitted an e-mail advertisement must clearly and conspicuously provide the recipient, within the e-mail advertisement's body, with both of the following (sec. 2307.63(B)(1)):

(1) The person'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 or causing to be transmitted the e-mail advertisement any additional e-mail advertisements for a 12-month period. This notice also must include a detailed procedure for declining to receive further e-mail advertisements for that period.

The bill specifies that, if a recipient uses the procedure mentioned above to decline to receive further e-mail advertisements for a 12-month period, the person that transmitted or caused to be transmitted the original e-mail advertisement, within a reasonable period of time, must cease transmitting or causing to be transmitted to the recipient any additional e-mail advertisements for a period of 12 months (sec. 2307.63(B)(2)).

The bill's e-mail advertisement required information provisions are not violated, however, if a person transmits or causes to be transmitted to a recipient an e-mail advertisement and (1) the person has a preexisting business or personal relationship with the recipient or (2) the recipient has expressly consented or has agreed as a condition of service to receive the e-mail advertisement from the person (sec. 2307.63(F)).

Related civil actions

Under the bill, if a person transmits or causes to be transmitted an e-mail advertisement in violation of the previously described provisions, an e-mail advertisement's recipient may bring a civil action against the person to enforce the provisions. The recipient may *recover* in the civil action *both* of the following: (1) actual damages or damages of \$100 per e-mail advertisement received in violation of the provisions, whichever is greater, and (2) reasonable attorney's fees, court costs, and other costs of bringing the action. (Sec. 2307.63(D).) In addition to these forms of monetary recovery, the recipient may apply to the court of common pleas of the county in which the recipient resides for an *order enjoining*

the person from transmitting or causing to be transmitted to the recipient any other e-mail advertisement within the applicable 12-month period (sec. 2307.63(E)).

Nonliability of e-mail service providers

The bill provides that an e-mail service provider is not liable for transmitting another person's e-mail advertisement through its service in violation of the Revised Code (for example, when the other person's e-mail advertisement fails to comply with the bill's above-described provisions). Additionally, an e-mail service provider is not liable for any action it voluntarily takes 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 the Revised Code (for example, for not complying with the bill's information or cessation requirements). The nonliability covered by these provisions appears to be nonliability for criminal prosecution as well as nonliability in a civil action. (Sec. 2307.63(C).)

Forgery of originating address: criminal prohibition

The bill prohibits a person from using a computer, a computer network, a computer program, or the computer services of an e-mail service provider with the intent to forge an 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. Each such use constitutes a separate offense. A violation of this prohibition constitutes the criminal offense of forgery, which, under current law (not in the bill), generally is a felony of the fifth degree but can be a felony of the second, third, or fourth degree under certain circumstances. (Secs. 2307.63(G) and 2913.31.)

Definitions

The bill defines the following terms for its provisions (sec. 2307.63(A)):

(1) "Electronic mail" means an electronic message that is transmitted between two or more telecommunication devices or electronic devices capable of receiving electronic messages, 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 electronic mail containing an advertisement.

(3) "Electronic mail service provider" means any person that is an intermediary in sending and receiving e-mail and that provides to users of e-mail

services the ability to send or receive e-mail. It includes an Internet service provider.

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

(5) "Receiving address" means the string of characters used to specify a recipient.

(6) "Recipient" means a person who receives an e-mail advertisement at any of the following: (a) a receiving address furnished by an e-mail service provider that bills for furnishing and maintaining that receiving address to a mailing address within Ohio, (b) a receiving address ordinarily accessed from a computer located within Ohio, (c) a receiving address ordinarily accessed by a person domiciled within Ohio, or (d) any other receiving address with respect to which the obligations imposed by the bill can be imposed consistent with the United States Constitution.

COMMENT

The bill uses certain terms defined in existing law as follows (sec. 2307.63(A)(1), (2), and (6)):

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

"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 services," as defined by R.C. 2913.01(L), includes the use of a computer system, computer network, computer program, data that is prepared for computer use, or data that is contained within a computer system or computer network.

"Internet," as defined by R.C. 341.42, means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web.

"Telecommunications device," as defined by R.C. 2913.01(Y), means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

HISTORY

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