

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**HOUSE BILL**

**No. 2614** Session of  
2002

---

INTRODUCED BY RAYMOND, ADOLPH, ALLEN, M. BAKER, BARD, BASTIAN, BELFANTI, CAPPELLI, CLARK, CORRIGAN, COSTA, CREIGHTON, CRUZ, DeLUCA, FICHTER, GEIST, GEORGE, GODSHALL, GRUCELA, HARHAI, HENNESSEY, HERSHEY, HESS, JOSEPHS, KELLER, KENNEY, KIRKLAND, LAUGHLIN, LEDERER, LEH, LESCOVITZ, MAHER, MAJOR, MANN, MARSICO, MAYERNIK, McCALL, McGEEHAN, McNAUGHTON, R. MILLER, NAILOR, PALLONE, PIPPY, RUBLEY, SAYLOR, SCRIMENTI, SEMMEL, SHANER, STABACK, STEELMAN, STERN, SURRA, TANGRETTI, E. Z. TAYLOR, THOMAS, WALKO, WANSACZ, WASHINGTON, WATSON, WOJNAROSKI, M. WRIGHT, G. WRIGHT AND YOUNGBLOOD, MAY 1, 2002

---

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 1, 2002

---

AN ACT

1 Prohibiting certain commercial electronic transmissions and the  
2 use of text, graphic or image messaging systems of wireless  
3 telephone systems to transmit unsolicited commercial  
4 messages; imposing penalties; providing for an individual  
5 action for damages; authorizing the blocking of commercial  
6 electronic mail by interactive computer service; and  
7 providing for the powers of the Attorney General.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Unsolicited  
12 Telecommunication Advertisement Act.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall  
15 have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

1 "Assist a transmission." Action taken by a person to provide  
2 substantial assistance or support which enables another person  
3 to formulate, compose, send, originate, initiate or transmit a  
4 bulk commercial electronic mail message when the person  
5 providing the assistance knows or consciously avoids knowing  
6 that the indicator of the commercial electronic mail message is  
7 engaged or intends to engage in any practice that violates the  
8 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
9 Trade Practices and Consumer Protection Law. This term does not  
10 include action by a provider of Internet access for mere  
11 transmission or hosting services in the ordinary course of  
12 business.

13 "Commercial electronic mail message." An electronic mail  
14 message sent for the purpose of promoting real property, goods  
15 or services for sale or lease. The term does not include an  
16 electronic mail transmission:

17 (1) to which an interactive computer service has  
18 attached an advertisement in exchange for free use of an  
19 electronic mail account when the sender has agreed to such an  
20 arrangement;

21 (2) sent as a result of an existing business  
22 relationship; or

23 (3) for which a previous business relationship existed  
24 with the recipient within the previous 90 days.

25 "Electronic mail address." A destination, commonly expressed  
26 as a string of characters, to which electronic mail may be sent  
27 or delivered.

28 "Electronic mail service." A person who is an intermediary  
29 in sending or receiving electronic mail or who provides end-  
30 users of electronic mail services the ability to send or receive

1 electronic mail.

2 "Fax." The transmission of the facsimile of a document  
3 through a connection with a telephone or computer network.

4 "Initiate a transmission." Action by the original sender of  
5 an electronic mail message, excluding action by any intervening  
6 interactive computer service that may handle or retransmit the  
7 message, unless such intervening interactive computer service of  
8 an electronic mail message when it knows or consciously avoids  
9 knowing that the person initiating the transmission is engaged  
10 or intends to engage in any act or practice that violates the  
11 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
12 Trade Practices and Consumer Protection Law. The term does not  
13 include action by a provider of Internet access for mere  
14 transmission or hosting services in the ordinary course of  
15 business.

16 "Internet domain name." A globally unique hierarchical  
17 reference to an Internet host or service assigned through  
18 centralized Internet naming authorities and comprising a series  
19 of character strings separated by periods with the right-most  
20 string specifying the top of the hierarchy.

21 "Wireless advertisement." The initiation of a telephone call  
22 or a message capable of providing text, graphic or image  
23 messages by a commercial mobile service provider, unlicensed  
24 wireless services provider or common carrier wireless exchange  
25 access service provider for the purpose of encouraging the  
26 purchase or rental of or investment in property, goods or  
27 services which is transmitted to a person. The term does not  
28 include a call or message to a person with that person's prior  
29 express invitation or permission or to a person with whom the  
30 caller has an established business relationship.

1 Section 3. Prohibition of unsolicited or misleading commercial  
2 electronic mail messages and faxes.

3 (a) General rule.--No person may initiate a transmission or  
4 conspire with another person to initiate a transmission or  
5 assist a transmission of a commercial electronic mail message or  
6 fax from a computer or fax machine located in this Commonwealth  
7 or to an electronic mail address that the sender knows or has  
8 reason to know is held by a resident of this Commonwealth that:

9 (1) uses a third party's Internet domain name without  
10 permission of the third party;

11 (2) misrepresents or obscures any information in  
12 identifying the point of origin or the transmission path of a  
13 commercial electronic mail message or fax;

14 (3) contains false or misleading information in the  
15 subject line; or

16 (4) fails to operate a valid sender-operated return e-  
17 mail address or toll-free telephone number that the recipient  
18 of the unsolicited documents may e-mail or call to notify the  
19 sender not to transmit further unsolicited documents.

20 (b) Presumption.--It shall be presumed that a person knows  
21 that the intended recipient of a commercial electronic mail  
22 message is a resident of this Commonwealth if that information  
23 is available, upon request, from the registrant of the Internet  
24 domain name contained in the recipient's electronic mail  
25 message.

26 (c) Covered mobile telephone messaging systems.--No person  
27 may use a covered mobile telephone messaging system to transmit  
28 an unsolicited commercial electronic mail message.

29 Section 4. Other conduct.

30 It shall be deemed a violation of this act for a person to:

1           (1) Conspire with another person to initiate the  
2 transmission or to initiate the transmission of a commercial  
3 electronic mail message, fax or wireless advertisement that  
4 uses a third party's Internet domain name without permission  
5 of the thirty party or to otherwise misrepresent or obscure  
6 any information identifying the point of origin or the  
7 transmission path of a commercial electronic mail message.

8           (2) Falsify or forge commercial electronic mail, fax or  
9 wireless transmission or other routing information in any  
10 manner in connection with the transmission of unsolicited  
11 commercial electronic mail or wireless advertisement.

12           (3) Assist in the transmission of a commercial  
13 electronic mail message fax or wireless advertisement when  
14 the person providing the assistance knows or consciously  
15 avoids knowing that the initiator of the commercial  
16 electronic mail message or fax is engaged or intends to  
17 engage in any act or practice that violates the provisions of  
18 this act.

19           (4) Temporarily or permanently remove, alter, halt or  
20 otherwise disable any computer or wireless data, programs  
21 software or network to initiate a commercial electronic mail  
22 message, fax or wireless advertisement.

23           (5) Sell, give or otherwise distribute or possess with  
24 the intent to sell, give or distribute software that is  
25 primarily designed or produced for the purposes of  
26 facilitating or enabling falsification of commercial  
27 electronic mail, fax or wireless advertisement transmissions.

28 Section 5. Violations.

29           (a) Other law.--A violation of this act shall constitute a  
30 violation of the act of December 17, 1968 (P.L.1224, No.387),

1 known as the Unfair Trade Practices and Consumer Protection Law.

2 (b) Procedure.--All actions of the Office of Attorney  
3 General under this act shall be taken subject to the right of  
4 notice, hearing and adjudication and the right of appeal  
5 therefrom in accordance with 2 Pa.C.S. (relating to  
6 administrative law and procedure).

7 Section 6. Blocking of commercial electronic mail.

8 (a) Discretionary right.--

9 (1) A person who provides electronic mail service or a  
10 wireless telecommunication company may upon its own  
11 initiative block the receipt or transmission through its  
12 service of any commercial electronic mail or wireless  
13 advertisement that it reasonably believes is or may be sent  
14 in violation of this act.

15 (2) Nothing in this act shall be construed to prevent or  
16 limit in any way a person who provides electronic mail  
17 service or a wireless telecommunications company from:

18 (i) adopting a policy regarding commercial or other  
19 electronic mail, including a policy of declining to  
20 transmit certain types of electronic mail messages; or

21 (ii) enforcing such policy through technology,  
22 contract or pursuant to any remedy available under any  
23 provision of law.

24 (b) Immunity.--No person who provides electronic mail  
25 service or wireless telecommunication company may be held liable  
26 for any action voluntarily taken in good faith to block the  
27 receipt or transmission through its service of any commercial  
28 electronic mail which it reasonably believes is or may be sent  
29 in violation of this act.

30 Section 7. Remedies available to consumers.

1 Nothing in this act shall be construed to limit the remedies  
2 available to consumers, the Attorney General or any district  
3 attorney under the act of December 17, 1968 (P.L.1224, No.387),  
4 known as the Unfair Trade Practices and Consumer Protection Law,  
5 or any other Federal or State law.

6 Section 8. Investigation, enforcement and reporting.

7 (a) Right of action.--

8 (1) The Bureau of Consumer Protection in the Office of  
9 Attorney General shall investigate any complaints received  
10 concerning violations of this section. If, after  
11 investigating any complaint, the Attorney General finds that  
12 there has been a violation of this section, the Attorney  
13 General may bring an action to impose a civil penalty and to  
14 seek other relief, including injunctive relief, under the act  
15 of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
16 Trade Practices and Consumer Protection Law.

17 (2) The Attorney General shall remit 10% of any civil  
18 penalty collected under this section to the person filing the  
19 complaint leading to the civil penalty. In no event, however,  
20 shall the amount of this remittance exceed \$100 for any  
21 person.

22 (b) Annual report to General Assembly.--On or before  
23 November 30 of each year, the Attorney General shall submit to  
24 the General Assembly a report detailing investigations and  
25 enforcement actions taken under this action during the preceding  
26 fiscal year. The report shall include, but not be limited to:

27 (1) The number of complaints received under this  
28 section.

29 (2) The nature of those complaints.

30 (3) The number of investigations and enforcement actions

1 instituted by the Attorney General.

2 (4) A summary of the results of those investigations.

3 (5) Enforcement and the amount of any civil penalties  
4 collected.

5 (c) Investigative powers.--Prior to the institution of a  
6 civil action, the Attorney General may require the attendance  
7 and testimony of witnesses and the production of documents. For  
8 this purpose, the Attorney General may issue subpoenas, examine  
9 witnesses and receive evidence. If a person objects to or  
10 otherwise fails to comply with a subpoena or request for  
11 testimony, the Attorney General may file in Commonwealth Court  
12 an action to enforce the subpoena or request. Notice of hearing  
13 the action and a copy of all pleadings shall be served upon the  
14 person who may appear in opposition.

15 (d) Confidentiality to be maintained.--Any testimony taken  
16 or material produced under this act shall be kept confidential  
17 by the Attorney General except to the extent the Attorney  
18 General may use information in a judicial proceeding or if the  
19 disclosure is authorized by the court for good cause shown or  
20 confidentiality is waived by the person being investigated and  
21 by the person who has testified, answered interrogatories or  
22 produced materials.

23 Section 9. Effective date.

24 This act shall take effect in 90 days.