

## 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, YOUNGBLOOD, T. STEVENSON AND FLICK, MAY 1, 2002

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2002

## AN ACT

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

1 context clearly indicates otherwise:

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

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

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

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

24 ~~(3) for which a previous business relationship existed~~  
25 ~~with the recipient within the previous 90 days.~~ ARRANGEMENT; <—

26 OR

27 (2) SENT AS A RESULT OF AN ESTABLISHED BUSINESS  
28 RELATIONSHIP.

29 "Electronic mail address." A destination, commonly expressed  
30 as a string of characters, to which electronic mail may be sent

1 or delivered.

2 "Electronic mail service." A person who is an intermediary  
3 in sending or receiving electronic mail or who provides end-  
4 users of electronic mail services the ability to send or receive  
5 electronic mail.

6 "ESTABLISHED BUSINESS RELATIONSHIP." A PRIOR OR EXISTING <—  
7 RELATIONSHIP FORMED BY A VOLUNTARY TWO-WAY COMMUNICATION  
8 INITIATED BY A PERSON OR ENTITY AND A RECIPIENT WITH OR WITHOUT  
9 AN EXCHANGE OF CONSIDERATION, ON THE BASIS OF AN INQUIRY,  
10 APPLICATION, PURCHASE OR TRANSACTION BY THE RECIPIENT REGARDING  
11 PRODUCTS OR SERVICES OFFERED BY SUCH PERSONS OR ENTITY. IN  
12 REGARD TO AN INQUIRY, THE PERSON OR ENTITY SHALL OBTAIN THE  
13 CONSENT OF A RECIPIENT BEYOND THE INITIAL INQUIRY. AN  
14 ESTABLISHED BUSINESS RELATIONSHIP DOES NOT EXIST IF THE  
15 RECIPIENT REQUESTS TO BE REMOVED FROM THE DISTRIBUTION LISTS OF  
16 AN INITIATOR PURSUANT TO SECTION 3(A)(4).

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

19 "Initiate a transmission." Action by the original sender of  
20 an electronic mail message, excluding action by any intervening  
21 interactive computer service that may handle or retransmit the  
22 message, unless such intervening interactive computer service of  
23 an electronic mail message when it knows or consciously avoids  
24 knowing that the person initiating the transmission is engaged  
25 or intends to engage in any act or practice that violates the  
26 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
27 Trade Practices and Consumer Protection Law. The term does not  
28 include action by a provider of Internet access OR ELECTRONIC <—  
29 MAIL SERVICE for mere transmission or hosting services in the  
30 ordinary course of business.

1 "Internet domain name." A globally unique hierarchical  
2 reference to an Internet host or service assigned through  
3 centralized Internet naming authorities and comprising a series  
4 of character strings separated by periods with the right-most  
5 string specifying the top of the hierarchy.

6 "Wireless advertisement." The initiation of a telephone call  
7 or a message capable of providing text, graphic or image  
8 messages by a commercial mobile service provider, unlicensed  
9 wireless services provider or common carrier wireless exchange  
10 access service provider for the purpose of ~~encouraging the~~ <—  
11 ~~purchase or rental of or investment in property, goods or~~  
12 ~~services which is transmitted to a person.~~ MARKETING GOODS OR <—  
13 SERVICES. The term does not include a call or message to a  
14 person with that person's prior express invitation or permission  
15 or to a person with whom the caller has an established business  
16 relationship.

17 Section 3. Prohibition of unsolicited or misleading commercial  
18 electronic mail messages and faxes.

19 (a) General rule.--No person may initiate a transmission or  
20 conspire with another person to initiate a transmission or  
21 assist a transmission of ~~a~~ AN UNSOLICITED commercial electronic <—  
22 mail message or fax from a computer or fax machine located in  
23 this Commonwealth or to an electronic mail address that: ~~the~~ <—  
24 ~~sender knows or has reason to know is held by a resident of this~~  
25 ~~Commonwealth that:~~

26 (1) uses a third party's Internet domain name IN THE <—  
27 RETURN ELECTRONIC MAIL MESSAGE without permission of the  
28 third party;

29 ~~(2) misrepresents or obscures any information in~~ <—  
30 ~~identifying the point of origin or the transmission path of a~~

1 ~~commercial electronic mail message or fax;~~

2 (2) INCLUDES FALSE OR MISLEADING INFORMATION IN THE RETURN ADDRESS PORTION OF THE ELECTRONIC MAIL, FACSIMILE OR WIRELESS ADVERTISEMENT SUCH THAT THE RECIPIENT WOULD BE UNABLE TO SEND A REPLY MESSAGE TO THE ORIGINAL AUTHENTIC SENDER;

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

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

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

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

22 Section 4. Other conduct.

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

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

1 (2) Falsify or forge commercial electronic mail, fax or  
2 wireless transmission or other routing information in any  
3 manner in connection with the transmission of unsolicited  
4 commercial electronic mail or wireless advertisement.

5 (3) Assist in the transmission of a commercial  
6 electronic mail message, fax or wireless advertisement when  
7 the person providing the assistance knows or consciously  
8 avoids knowing that the initiator of the commercial  
9 electronic mail message or fax is engaged or intends to  
10 engage in any act or practice that violates the provisions of  
11 this act.

12 (4) Temporarily or permanently remove, alter, halt or  
13 otherwise disable any computer or wireless data, programs  
14 software or network to initiate a commercial electronic mail  
15 message, fax or wireless advertisement.

16 (5) Sell, give or otherwise distribute or possess with  
17 the intent to sell, give or distribute software that is  
18 primarily designed or produced for the purposes of  
19 facilitating or enabling falsification of commercial  
20 electronic mail, fax or wireless advertisement transmissions.

21 Section 5. Violations.

22 (a) Other law.--A violation of this act shall constitute a  
23 violation of the act of December 17, 1968 (P.L.1224, No.387),  
24 known as the Unfair Trade Practices and Consumer Protection Law.

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

30 Section 6. Blocking of commercial electronic mail.

1 (a) Discretionary right.--

2 (1) A person who provides electronic mail service or a  
3 wireless telecommunication company may upon its own  
4 initiative block OR FILTER the receipt or transmission ←  
5 through its service of any commercial electronic mail or  
6 wireless advertisement that it reasonably believes is or may  
7 be sent in violation of this act.

8 (2) Nothing in this act shall be construed to prevent or  
9 limit in any way a person who provides INTERNET ACCESS OR ←  
10 electronic mail service or a wireless telecommunications  
11 company from:

12 (i) adopting a policy regarding commercial or other  
13 electronic mail, including a policy of BLOCKING, ←  
14 FILTERING OR declining to transmit certain types of  
15 electronic mail messages; ~~or~~ ←

16 (II) SUSPENDING OR TERMINATING THE SERVICES OR ←  
17 ACCOUNTS OF ANY PERSON DEEMED IN VIOLATION OF THIS ACT;  
18 OR

19 ~~(ii)~~ (III) enforcing such policy through technology, ←  
20 contract or pursuant to any remedy available under any  
21 provision of law.

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

28 Section 7. Remedies available to consumers.

29 Nothing in this act shall be construed to limit the remedies  
30 available to consumers, the Attorney General or any district

1 attorney under the act of December 17, 1968 (P.L.1224, No.387),  
2 known as the Unfair Trade Practices and Consumer Protection Law,  
3 or any other Federal or State law.

4 Section 8. Investigation, enforcement and reporting.

5 (a) Right of action.--

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

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

20 (3) ANY INTERNET ACCESS PROVIDER, ELECTRONIC MAIL <—  
21 SERVICE PROVIDER OR WIRELESS TELECOMMUNICATION COMPANY  
22 AGGRIEVED BY A VIOLATION OF THIS ACT SHALL HAVE THE RIGHT TO  
23 INITIATE AN ACTION TO ENJOIN SUCH VIOLATION AND TO RECOVER  
24 DAMAGES IN THE AMOUNT OF NO LESS THAN \$1 OR MORE THAN \$10 PER  
25 VIOLATION. FOR THE PURPOSE OF THIS SECTION EACH UNSOLICITED  
26 COMMERCIAL ELECTRONIC MAIL, FACSIMILE OR WIRELESS  
27 ADVERTISEMENT RECEIVED CONSTITUTES A SEPARATE VIOLATION.

28 (I) FOR WILLFUL VIOLATIONS OF THIS ACT THE COURT  
29 MAY, IN ITS DISCRETION, INCREASE THE AMOUNT OF THE AWARD  
30 TO AN AMOUNT NOT EXCEEDING \$1,500,000.



1 (II) NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW  
2 TO THE CONTRARY, IN ADDITION TO ANY DAMAGES AWARDED, SUCH  
3 PERSON MAY BE AWARDED REASONABLE ATTORNEY FEES AND COURT  
4 COSTS.

5 (b) Annual report to General Assembly.--On or before  
6 November 30 of each year, the Attorney General shall submit to  
7 the General Assembly a report detailing investigations and  
8 enforcement actions taken under this ~~act~~ ACT during the ←  
9 preceding fiscal year. The report shall include, but not be  
10 limited to:

11 (1) The number of complaints received under this  
12 section.

13 (2) The nature of those complaints.

14 (3) The number of investigations and enforcement actions  
15 instituted by the Attorney General.

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

17 (5) Enforcement and the amount of any civil penalties  
18 collected.

19 (c) Investigative powers.--Prior to the institution of a  
20 civil action, the Attorney General may require the attendance  
21 and testimony of witnesses and the production of documents. For  
22 this purpose, the Attorney General may issue subpoenas, examine  
23 witnesses and receive evidence. If a person objects to or  
24 otherwise fails to comply with a subpoena or request for  
25 testimony, the Attorney General may file in Commonwealth Court  
26 an action to enforce the subpoena or request. Notice of hearing  
27 the action and a copy of all pleadings shall be served upon the  
28 person who may appear in opposition.

29 (d) Confidentiality to be maintained.--Any testimony taken  
30 or material produced under this act shall be kept confidential

1 by the Attorney General except to the extent the Attorney  
2 General may use information in a judicial proceeding or if the  
3 disclosure is authorized by the court for good cause shown or  
4 confidentiality is waived by the person being investigated and  
5 by the person who has testified, answered interrogatories or  
6 produced materials.

7 Section 9. Effective date.

8 This act shall take effect in 90 days.