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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 887**      Session of  
2007

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INTRODUCED BY MARKOSEK, ADOLPH, BAKER, BARRAR, BELFANTI,  
BENNINGTON, BIANCUCCI, BOYD, CALTAGIRONE, CARROLL, COHEN,  
COSTA, CUTLER, DeLUCA, DENLINGER, DERMODY, DONATUCCI,  
FRANKEL, FREEMAN, GEIST, GEORGE, GERGELY, GIBBONS, GOODMAN,  
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MARSICO, McGEEHAN, MELIO, MILLARD, MUSTIO, O'NEILL, PALLONE,  
PARKER, PETRARCA, PYLE, RAMALEY, RAYMOND, READSHAW, REED,  
REICHLEY, ROSS, SANTONI, SAYLOR, SCAVELLO, SCHRODER,  
SIPTROTH, R. STEVENSON, STURLA, J. TAYLOR, THOMAS, WALKO,  
WANSACZ, WATSON, J. WHITE, WOJNAROSKI, YOUNGBLOOD, YUDICHAK  
AND MURT, MARCH 22, 2007

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 22, 2007

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AN ACT

1 Regulating unsolicited electronic mail advertisements; and  
2 prescribing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Unsolicited  
7 Electronic Mail Advertisements Act.

8 Section 2. Definitions.

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

12 "Access." To instruct, communicate with, store data in,  
13 retrieve data from or otherwise make use of any resources of a

1 computer, computer system or computer network.

2 "Computer." An electronic device which performs logical,  
3 arithmetic and memory functions by the manipulations of  
4 electronic, photonic or magnetic impulses and includes all  
5 input, output, processing, storage, software or communication  
6 facilities which are connected or related to the device in a  
7 system or network, including devices available to the public for  
8 limited or designated use or other devices used to access or  
9 connect to the system or network.

10 "Computer network." The interconnection of remote user  
11 terminals with a computer through communication lines or a  
12 complex consisting of two or more interconnected computers.

13 "Computer program." A series of instructions or statements  
14 or related data that in actual or modified form is capable of  
15 causing a computer or a computer system to perform specified  
16 functions in a form acceptable to a computer, which permits the  
17 functioning of a computer system in a manner designed to provide  
18 appropriate products from the computer system.

19 "Computer software." A set of computer programs, procedures  
20 and associated documentation concerned with the operation of a  
21 computer system.

22 "Computer system." A set of connected computer equipment,  
23 devices and software.

24 "Data." Any representation of information, knowledge, facts,  
25 concepts or instructions which are being prepared or have been  
26 prepared and are intended to be entered, processed or stored,  
27 are being entered, processed or stored or have been entered,  
28 processed or stored in a computer, computer system or computer  
29 network.

30 "Electronic mail." A message, file or other information that

1 is transmitted through a local, regional or global network,  
2 regardless of whether the message, file or other information is:

- 3 (1) viewed;
- 4 (2) stored for retrieval at a later time;
- 5 (3) printed onto paper or other similar material; or
- 6 (4) filtered or screened by a computer program that is  
7 designed or intended to filter or screen such items.

8 "Electronic mail advertisement." Any electronic message  
9 containing solicitations for the sale, lease, rental, gift,  
10 offer or other disposition of realty, goods, services or offers  
11 of credit.

12 "Electronic mail service provider." A person who:

- 13 (1) is an intermediary in sending or receiving  
14 electronic mail; and
- 15 (2) provides to end-users of electronic mail services  
16 the ability to send or receive electronic mail.

17 "Registry." The Statewide registry established in section 4.

18 "Services." Includes computer time, data processing and  
19 storage functions.

20 "Unsolicited electronic mail advertisement."

21 (1) An electronic mail advertisement that meets both of  
22 the following requirements:

23 (i) The message is addressed to a recipient with  
24 whom the initiator does not have an existing business or  
25 personal relationship.

26 (ii) The message is not sent at the request of or  
27 with the express consent of the recipient.

28 (2) The term does not include transmission of an  
29 electronic mail advertisement:

30 (i) From an organization to its members.

1 (ii) On behalf of an organization granted tax-exempt  
2 status under section 501(c)(3), (5) or (8) of the  
3 Internal Revenue Code of 1986 (Public Law 99-514, 26  
4 U.S.C. § 1 et seq.) or a veterans organization chartered  
5 by the Congress of the United States and/or its duly  
6 appointed foundation.

7 (iii) On behalf of a political candidate or a  
8 political party.

9 Section 3. Prohibitions.

10 (a) Distribution of unsolicited electronic mail  
11 advertisement.--

12 (1) No person shall, without authorization and without  
13 checking the registry, intentionally or recklessly distribute  
14 any unsolicited electronic mail advertisement to any  
15 receiving address or account under the control of any  
16 authorized user of a computer system.

17 (2) No electronic mail service provider shall be liable  
18 under this section solely for:

19 (i) transmitting an unsolicited electronic mail  
20 advertisement in its network; or

21 (ii) any action voluntarily taken in good faith to  
22 block the receipt or transmission through its service of  
23 any unsolicited electronic mail advertisement which it  
24 believes is or will be sent in violation of this section.

25 (b) Falsifying or forging transmission information.--No  
26 person shall without authorization use a computer or computer  
27 network with the intent to falsify or forge electronic mail  
28 transmission information in connection with the transmission of  
29 unsolicited electronic mail advertisements through or into the  
30 computer network of an electronic mail service provider or its

1 subscribers.

2 (c) Software.--No person shall sell, distribute or possess,  
3 with the intent to sell or distribute, software which:

4 (1) is primarily designed or produced for the purpose of  
5 facilitating or enabling the falsification of electronic mail  
6 transmission information or other routing information;

7 (2) has only limited commercially significant purpose or  
8 use other than to facilitate or enable the falsification of  
9 electronic mail transmission information or other routing  
10 information; or

11 (3) is marketed for use in facilitating or enabling the  
12 falsification of electronic mail transmission information or  
13 other routing information.

14 (d) Failure to cease sending electronic mail  
15 advertisements.--No person shall intentionally, recklessly or  
16 negligently fail to cease sending electronic mail advertisements  
17 to any receiving address or account under control of any  
18 authorized user of a computer system after being requested to do  
19 so or after the authorized user has been entered on the registry  
20 list.

21 (e) Information to be provided.--No person shall send any  
22 electronic mail advertisement to any receiving address within  
23 this Commonwealth without information describing how to  
24 unsubscribe, how to be removed from the mailing list or how to  
25 stop further receipt of electronic mail advertisements from the  
26 sender.

27 (f) Subject line notice.--No person shall send any  
28 electronic mail advertisement to any receiving address or  
29 account under the control of any authorized user of a computer  
30 system within this Commonwealth unless the advertisement

1 specifies in the subject line area of the message the following  
2 notice:

3 (1) "ADV" for advertisements; or

4 (2) "ADV: ADULT" for those advertisements that contain  
5 pornographic or sexually explicit advertisements.

6 (g) Penalty.--A person who violates this section commits a  
7 summary offense and shall upon conviction:

8 (1) For a first offense, be sentenced to pay a fine of  
9 not more than \$500.

10 (2) For a second or subsequent offense, be sentenced to  
11 pay a fine of not more than \$1,000.

12 Section 4. Registry.

13 The Bureau of Consumer Protection in the Office of Attorney  
14 General shall establish and maintain the "Do Not E-mail"  
15 Statewide Registry which shall contain a list of those persons  
16 who do not wish to receive unsolicited electronic mail  
17 advertisements. The bureau may contract with a private vendor to  
18 establish and maintain the registry, provided the private vendor  
19 has experience in maintaining the information and the contract  
20 requires the vendor to provide the registry in a printed hard  
21 copy format and in any other format as prescribed by the bureau.

22 Section 5. Effective date.

23 This act shall take effect in 60 days.