

714E.1 Restrictions on use of electronic mail damages exceptions.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. *"Advertisement"* means an electronic mail message sent to a computer for the purpose of promoting real property, goods, or services for sale, lease, barter, or auction.

b. *"Computer"* means an electronic device that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer, including a computer network. As used in this paragraph, *"computer"* includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. *"Computer network"* means a set of related, remotely connected devices and communication facilities, including two or more computers with capability to transmit data among them through communication facilities.

d. *"Electronic mail"* means an electronic message, file, data, or other electronic information that is transmitted using an internet or intranet computer network to one or more persons.

e. *"Interactive computer service"* means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated or services offered by a library or an educational institution.

f. *"Internet domain name"* means a globally unique, hierarchical reference to an internet host or service, assigned through a centralized internet naming authority, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

g. *"Recipient"* means a person who receives electronic mail.

2. *Prohibited acts.* It is unlawful for a person to use an interactive computer service to initiate the sending of bulk electronic mail that the sender knows, or has reason to know, violates any of the following:

a. Uses the name of a third party in the return address field without permission of the third party.

b. Misrepresents any information in identifying the point of origin of the transmission path of the electronic mail.

c. Does not contain information identifying the point of origin or the transmission path of the electronic mail message.

d. With respect to an unsolicited advertisement, does not, at a minimum, provide an electronic mail address readily identifiable in the advertisement to which the recipient may send a request for declining such electronic mail.

e. Demonstrates a pattern of sending unsolicited advertisements to a recipient who has sent the person a request for declining such electronic mail following a reasonable time, which in no event shall be more than five business days, after the receipt by the person of such request.

3. *Civil damages.*

a. (1) Except as provided in paragraph "b", a person who is injured in person or property as a result of a violation of this section may bring an action to recover damages. Such damages shall include, but are not limited to, actual damages including lost profits.

(2) Notwithstanding subparagraph (1), a person who transmits or causes to be transmitted electronic mail in violation of subsection 2 is liable to the recipient of the electronic mail for monetary damages in an amount equal to any actual damages, including lost profits, caused by such transmittal. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such electronic mail the greater of ten dollars for each bulk electronic mail message transmitted to the recipient in violation of this section, or five hundred dollars. In addition to the monetary damages, the recipient is also entitled to costs and reasonable attorney fees.

b. (1) Notwithstanding paragraph "a", if the person injured is an interactive computer service and such injury arises from a person who transmits bulk electronic mail without authority, such service may recover actual damages, attorney fees, and costs. Such service, in lieu of recovering actual damages, may also elect to recover the greater of ten dollars for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is "*without authority*" when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person's right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

4. *Injunction.* In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. *Jurisdiction.* Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service's computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. *Exceptions.*

a. This section does not apply to any of the following:

(1) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person knowingly transmits electronic mail that includes an advertisement which the person prepared or caused to be prepared.

(2) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits electronic mail on behalf of those users which the person knows, or should have known was transmitted in violation of subsection 2.

(3) Electronic mail which is accessed by the recipient from an electronic bulletin board.

(4) A person who provides users with access at no charge to electronic mail, including receiving and transmitting such electronic mail, and as a condition of providing such access requires such users to receive unsolicited advertisements.

b. An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any commercial electronic mail which is reasonably believed to be in violation of subsection 2.

99 Acts, ch 185, §1