

**SUBSTITUTE FOR
SENATE BILL NO. 357**

A bill to require certain restrictions on the transmission of unsolicited commercial e-mail; to allow recipients of e-mail to be excluded from receiving future e-mail; to prescribe the powers and duties of certain state agencies; and to provide penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "electronic mail solicitation act".

3 Sec. 2. As used in this act:

4 (a) "Commercial" means for the purpose of promoting the sale,
5 lease, or exchange of goods, services, or real property.

6 (b) "Computer network" means 2 or more computers that are
7 interconnected to exchange electronic messages, files, data, or
8 other information.

9 (c) "Department" means the department of consumer and

1 industry services.

2 (d) "E-mail" means an electronic message, file, data, or
3 other information that is transmitted between 2 or more
4 computers, computer networks, or electronic terminals or within a
5 computer network.

6 (e) "E-mail address" means a destination, commonly expressed
7 as a string of characters, to which e-mail may be sent or
8 delivered.

9 (f) "E-mail service provider" means a person that is an
10 intermediary in the transmission of e-mail from the sender to the
11 recipient or provides to end users of e-mail service the ability
12 to send and receive e-mail.

13 (g) "Internet domain name" means a globally unique,
14 hierarchical reference to an internet host or service, assigned
15 through centralized internet authorities, comprising a series of
16 character strings separated by periods, with the right-most
17 string specifying the top of the hierarchy.

18 (h) "List" or "registry" means the protective list created
19 under section 4.

20 (i) "Person" means an individual, corporation, partnership,
21 association, governmental entity, or any other legal entity.

22 (j) "Preexisting business relationship" means that there was
23 a business transaction between the initiator and the recipient of
24 a commercial e-mail message during the 10-year period preceding
25 the receipt of that message. A preexisting business relationship
26 includes a transaction involving the free provision of
27 information, goods, or services requested by the recipient.

1 (k) "Program" means the electronic mail solicitation program
2 created under section 3.

3 (l) "Property" means any of the following:

4 (i) Real property.

5 (ii) Computers, computer networks, and computer services.

6 (iii) Financial instruments, computer data, computer
7 programs, computer software, and all other personal property
8 regardless of whether it is tangible or intangible.

9 (m) "Receiving address" means the string of characters used
10 to specify a recipient with each receiving address creating a
11 unique and separate recipient.

12 (n) "Recipient" means a person who receives an e-mail
13 advertisement.

14 (o) "Unsolicited" means without the recipient's express
15 permission. Except as otherwise provided under this act, an
16 e-mail is not unsolicited if the sender has a preexisting
17 business or personal relationship with the recipient. An e-mail
18 is not unsolicited if it was received as a result of the
19 recipient opting into a system in order to receive informational
20 material.

21 Sec. 3. (1) The electronic mail solicitation program is
22 created within the department of consumer and industry services.

23 (2) The program shall be managed and administered by the
24 department or a program manager selected by the department.

25 (3) The program shall be funded completely from the fees,
26 fines, civil penalties, and forfeitures collected by the attorney
27 general as allowed under this act. If the amount of funds

1 collected under this act for a fiscal year exceeds the cost of
2 administering the program, the excess amount shall be deposited
3 into the general fund.

4 (4) The program shall be fully operational no later than
5 January 1, 2004 or 90 days from the effective date of this act,
6 whichever is later.

7 Sec. 4. (1) The program shall maintain a list of e-mail
8 addresses of persons who do not want to receive unsolicited
9 commercial e-mail.

10 (2) A person may be included on the list created under
11 subsection (1) by registering 1 or more e-mail addresses with the
12 program. A registration under this section shall be for a period
13 of at least 3 years.

14 (3) The department, in consultation with the program manager,
15 may create specific categories of e-mail for which recipients who
16 are minors can receive protection under this act. A parent,
17 legal guardian, or other person with authority or control over
18 e-mail addresses to which minor children may have access may list
19 an e-mail address under 1 or more of the categories to give
20 notice that they do not give consent to receive e-mail within
21 that category. The categories under this subsection shall be
22 limited to products or services that a minor child is prohibited
23 by law from purchasing. E-mail senders shall honor these
24 categories even if they have evidence of a preexisting business
25 relationship.

26 (4) The program shall update the list not less than every 30
27 days.

1 (5) A person may renew a registration for another 3 years in
2 the same manner as provided under subsection (2).

3 (6) The program shall not release to another person
4 information concerning persons or provide access to addresses
5 contained on the list except as provided by this act.

6 (7) The list created under this section is not subject to the
7 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

8 Sec. 5. (1) Except as otherwise provided under this act, a
9 listing in the registry created under section 4 puts all senders
10 of e-mail on notice that unsolicited commercial e-mail shall not
11 be sent to an address on the list unless the sender has a
12 preexisting business relationship with the recipient. The notice
13 alerts senders of e-mail that they shall comply with all
14 provisions of law and are subject to the state's jurisdiction
15 when sending to addresses on the list.

16 (2) Senders of unsolicited commercial e-mail in this state
17 shall include a valid method to opt out of future messages. A
18 subscription to the registry and subsequent honoring of opt-out
19 requests that are filed for the particular sender with the
20 program manager of the registry is considered an acceptable
21 opt-out method.

22 Sec. 6. (1) A person shall not send unsolicited commercial
23 e-mail to an e-mail address in this state unless the person has
24 registered with the program and paid an annual fee to be
25 determined by the department.

26 (2) A person sending unsolicited commercial e-mail is
27 required to remove e-mail addresses that appear on the registry

1 from their mailing lists if they do not have a preexisting
2 business relationship, the type of mail they plan to send is
3 within 1 of the specific categories the recipient has said they
4 do not consent to receive under section 4, or the e-mail holder
5 has opted out of the specific sender's mailing list.

6 (3) A sender of unsolicited commercial e-mail shall update
7 their list every 30 days with the latest available copy of the
8 registry.

9 (4) If a person sends an unsolicited commercial e-mail
10 without first verifying the recipient's e-mail address against
11 the registry as required by the program, the sending of the
12 e-mail shall be considered done without the recipient's consent
13 and is a violation of this act.

14 (5) A sender of e-mail registered under this section shall
15 establish procedures to ensure that no unsolicited commercial
16 e-mail is sent to a person on a list created under section 4
17 except as provided by this act.

18 (6) The burden of proof that the sender had the recipient's
19 consent to send unsolicited commercial e-mail is on the sender.

20 (7) A person shall not sell or use the list created under
21 section 4 for any purpose other than meeting the requirements of
22 this act.

23 Sec. 7. A person who intentionally sends or causes to be
24 sent an unsolicited commercial e-mail through an e-mail service
25 provider that the sender knew or should have known is located in
26 this state or to an e-mail address that the sender knew or should
27 have known is held by a resident of this state shall do all of

1 the following:

2 (a) Include in the e-mail subject line "ADV:" as the first 4
3 characters.

4 (b) Conspicuously state in the e-mail all of the following:

5 (i) The sender's legal name.

6 (ii) The sender's correct street address.

7 (iii) The sender's valid internet domain name.

8 (iv) The sender's valid return e-mail address.

9 (c) Establish a toll-free telephone number, a valid
10 sender-operated return e-mail address, or another easy-to-use
11 electronic method that the recipient of the commercial e-mail
12 message may call or access by e-mail or other electronic means to
13 opt out and notify the sender not to transmit any further
14 unsolicited commercial e-mail messages. The notification process
15 may include the ability for the recipient to direct the sender to
16 transmit or not transmit particular commercial e-mail messages
17 based upon products, services, divisions, organizations,
18 companies, or other selections of the recipient's choice. An
19 unsolicited commercial e-mail message shall conspicuously
20 include, in print as large as the print used for the majority of
21 the e-mail message, a statement informing the recipient of a
22 toll-free telephone number that the recipient may call, or a
23 valid return address to which the recipient may write or access
24 by e-mail, notifying the sender not to transmit to the recipient
25 any further unsolicited commercial e-mail messages.

26 (d) Conspicuously provide in the text of the unsolicited
27 commercial e-mail, in print as large as the print used for the

1 majority of the e-mail, a notice that informs the recipient that
2 the recipient may conveniently and at no cost be excluded from
3 future unsolicited commercial e-mail from the sender as provided
4 under this act.

5 Sec. 8. (1) A person who sends or causes to be sent an
6 unsolicited commercial e-mail through an e-mail service provider
7 located in this state or to an e-mail address held by a resident
8 of this state shall not do any of the following:

9 (a) Use a third party's internet domain name or third party
10 e-mail address in identifying the point of origin or in stating
11 the transmission path of the unsolicited commercial e-mail
12 without the third party's consent.

13 (b) Misrepresent any information in identifying the point of
14 origin or the transmission path of the unsolicited commercial
15 e-mail.

16 (c) Fail to include in the unsolicited commercial e-mail the
17 information necessary to identify the point of origin of the
18 unsolicited commercial e-mail.

19 (d) Provide directly or indirectly to another person the
20 software described under section 9.

21 (2) If the recipient of an unsolicited commercial e-mail
22 notifies the sender that the recipient does not want to receive
23 future unsolicited commercial e-mail from the sender, the sender
24 shall not send that recipient unsolicited commercial e-mail
25 either directly or indirectly through a third party.

26 (3) A sender of unsolicited commercial e-mail shall establish
27 and maintain the necessary policies and records to ensure that

1 the recipient who has notified the sender under subsection (2)
2 does not receive any e-mail from the date of the notice. The
3 sender shall update its records under this subsection not less
4 than every 14 business days.

5 Sec. 9. A person shall not knowingly sell, give, or
6 otherwise distribute or possess with the intent to sell, give, or
7 distribute software that does any of the following:

8 (a) Is primarily designed or produced for the purpose of
9 facilitating or enabling the falsification of commercial e-mail
10 transmission information or other routing information.

11 (b) Has only limited commercially significant purpose or use
12 other than to facilitate or enable the falsification of
13 unsolicited commercial e-mail transmission information or other
14 routing information.

15 (c) Is marketed by that person or another acting in concert
16 with that person with that person's knowledge for use in
17 facilitating or enabling the falsification of unsolicited
18 commercial e-mail transmission information or other routing
19 information.

20 Sec. 10. (1) An e-mail service provider may design its
21 software so that a sender of unsolicited commercial e-mail is
22 given notice of the requirements of this act each time the sender
23 requests delivery of e-mail. The existence of such software
24 shall constitute actual notice to the sender of the requirements
25 of this act.

26 (2) An e-mail service provider that designs and implements a
27 dispute resolution process for a sender who believes the sender's

1 e-mail message has been improperly blocked, and makes contact
2 information accessible on its website, is not liable under this
3 act for blocking the receipt or transmission of the e-mail.

4 Sec. 11. (1) A person who violates this act is guilty of a
5 misdemeanor punishable by imprisonment for not more than 1 year
6 or a fine of not more than \$10,000.00, or both. Each e-mail sent
7 in violation of this act is a separate violation under this
8 section.

9 (2) An e-mail service provider does not violate this act
10 solely by being an intermediary between the sender and recipient
11 in the transmission of an e-mail that violates this act.

12 (3) It is a defense to an action brought under this section
13 or section 12 that the unsolicited commercial e-mail was
14 transmitted accidentally. The burden of proving that the e-mail
15 was transmitted accidentally is on the sender.

16 (4) All money and other income, including all proceeds earned
17 but not yet received by a defendant from a third party as a
18 result of the defendant's violations of this act, and all
19 computer equipment, all computer software, and all personal
20 property used in connection with any violation of this act known
21 by the owner to have been used in violation of this act are
22 subject to lawful seizure by a law enforcement officer and
23 forfeiture by this state.

24 Sec. 12. (1) A civil action may be brought by a person who
25 received an unsolicited commercial e-mail in violation of this
26 act.

27 (2) A civil action may be brought by an e-mail service

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1 provider through whose facilities the unsolicited commercial
2 e-mail was transmitted in violation of this act.

3 (3) A civil action may be brought by the attorney general
4 against a person who has violated this act.

5 (4) In each action brought under this section, a recipient,
6 an e-mail service provider, or attorney general may recover 1 of
7 the following:

8 (a) Actual damages.

9 (b) In lieu of actual damages, recover the lesser of the
10 following:

11 (i) \$500.00 per unsolicited commercial e-mail received by a
12 recipient or transmitted through the e-mail service provider.

13 (ii) \$250,000.00 for each day that the violation occurs.

14 (5) A prevailing <<recipient or>> e-mail service provider shall be
awarded
15 actual costs and reasonable attorney fees.