

1 AN ACT concerning electronic mail.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Electronic Mail Act is amended by  
5 changing Section 10 and adding Sections 17, 20, 25, 30, 35,  
6 and 40 as follows:

7 (815 ILCS 511/10)

8 Sec. 10. Unsolicited or misleading electronic mail;  
9 prohibition.

10 (a) No individual or entity may initiate or cause to be  
11 initiated an unsolicited electronic mail advertisement if the  
12 electronic mail advertisement (i) uses a third party's  
13 Internet domain name without permission of the third party,  
14 or otherwise misrepresents any information in identifying the  
15 point of origin or the transmission path of an electronic  
16 mail advertisement or (ii) contains false or misleading  
17 information in the subject line.

18 (b) This Section applies when the unsolicited electronic  
19 mail advertisement is delivered to an Illinois resident via  
20 an electronic mail service provider's service or equipment  
21 located in this State.

22 (c) Any person~~7--ether--than-an-electronic-mail-service~~  
23 ~~provider~~7, who suffers actual damages as a result of a  
24 violation of this Section committed by any individual or  
25 entity may bring an action against such individual or entity.  
26 The injured person may recover attorney's fees and costs, and  
27 may elect, in lieu of recovery of actual damages, to recover  
28 the lesser of \$10 for each and every unsolicited electronic  
29 mail advertisement transmitted in violation of this Section,  
30 or \$25,000 per day. The injured person shall not have a  
31 cause of action against the electronic mail service provider

1 that merely transmits the unsolicited electronic mail  
2 advertisement over its computer network.

3 (d) (Blank). ~~Any electronic mail service provider who~~  
4 ~~suffers actual damages as a result of a violation of this~~  
5 ~~Section committed by any individual or entity may bring an~~  
6 ~~action against such individual or entity. The injured person~~  
7 ~~may recover attorney's fees and costs, and may elect, in lieu~~  
8 ~~of recovery of actual damages, to recover the lesser of \$10~~  
9 ~~for each and every unsolicited electronic mail advertisement~~  
10 ~~transmitted in violation of this Section, or \$25,000 per day.~~

11 (e) The provisions of this Section shall not be  
12 construed to limit any person's right to pursue any  
13 additional civil remedy otherwise allowed by law.

14 (f) An electronic mail service provider may, upon its  
15 own initiative, block the receipt or transmission through its  
16 service of any unsolicited electronic mail advertisement that  
17 it reasonably believes is, or will be, sent in violation of  
18 this Section.

19 (g) No electronic mail service provider may be held  
20 liable for any action voluntarily taken in good faith to  
21 block the receipt or transmission through its service of any  
22 unsolicited electronic mail advertisement which it reasonably  
23 believes is, or will be, sent in violation of this Section.

24 (Source: P.A. 91-233, eff. 1-1-00.)

25 (815 ILCS 511/17 new)

26 Sec. 17. Requirements relating to transmissions of  
27 unsolicited commercial electronic mail.

28 (a) Information to be included in transmissions.

29 (1) In general. A person who transmits an  
30 unsolicited commercial electronic mail message shall  
31 cause to appear in each such electronic mail message the  
32 information specified in paragraph (2).

33 (2) Covered information. The following information

1 shall appear at the beginning of the body of an  
2 unsolicited commercial electronic mail message under  
3 paragraph (1):

4 (A) The name, physical address, electronic  
5 mail address, and telephone number of the person who  
6 initiates transmission of the message.

7 (B) The name, physical address, electronic  
8 mail address, and telephone number of the person who  
9 created the content of the message, if different  
10 from the information under subparagraph (A).

11 (C) A statement that further transmissions of  
12 unsolicited commercial electronic mail to the  
13 recipient by the person who initiates transmission  
14 of the message may be stopped at no cost to the  
15 recipient by sending a reply to the originating  
16 electronic mail address with the word "remove" in  
17 the subject line.

18 (b) Routing information. All Internet routing  
19 information contained within or accompanying an electronic  
20 mail message described in subsection (a) must be accurate,  
21 valid according to the prevailing standards for Internet  
22 protocols, and accurately reflect message routing.

23 (c) Operation. The requirements in this Section become  
24 operative 30 days after the effective date of this amendatory  
25 Act of the 92nd General Assembly.

26 (815 ILCS 511/20 new)

27 Sec. 20. Oversight of unsolicited commercial electronic  
28 mail.

29 (a) Transmissions.

30 (1) In general. Upon notice from a person of the  
31 person's receipt of electronic mail in violation of a  
32 provision of Section 17 or 35, the Commission:

33 (A) may conduct an investigation to determine

1 whether or not the electronic mail was transmitted  
2 in violation of such provision; and

3 (B) if the Commission determines that the  
4 electronic mail was transmitted in violation of such  
5 provision, may:

6 (i) impose upon the person initiating the  
7 transmission a civil fine in an amount not to  
8 exceed \$15,000;

9 (ii) commence a civil action to recover a  
10 civil penalty in an amount not to exceed  
11 \$15,000 against the person initiating the  
12 transmission;

13 (iii) commence a civil action to seek  
14 injunctive relief; or

15 (iv) proceed under any combination of the  
16 authorities set forth in clauses (i), (ii), and  
17 (iii).

18 (2) Deadline. The Commission may not take action  
19 under paragraph (1)(B) with respect to a transmission of  
20 electronic mail more than 2 years after the date of the  
21 transmission.

22 (b) Administration.

23 (1) Notice by electronic means. The Commission  
24 shall establish an Internet web site with an electronic  
25 mail address for the receipt of notices under subsection  
26 (a).

27 (2) Information on enforcement. The Commission  
28 shall make available through the Internet web site  
29 established under paragraph (1) information on the  
30 actions taken by the Commission under subsection  
31 (a)(1)(B).

32 (815 ILCS 511/25 new)

33 Sec. 25. Duty of Illinois Attorney General.

1       (a) In general. Whenever the Attorney General has reason  
2 to believe that the interests of Illinois residents have been  
3 or are being threatened or adversely affected because any  
4 person is engaging in a pattern or practice of the  
5 transmission of electronic mail in violation of a provision  
6 of Section 17 or 35, the Attorney General may bring a civil  
7 action on behalf of its residents to enjoin such  
8 transmission, to enforce compliance with such provision, to  
9 obtain damages or other compensation on behalf of its  
10 residents, or to obtain such further and other relief as the  
11 court considers appropriate.

12       (b) Notice to Commission.

13           (1) Notice. The Attorney General shall serve prior  
14 written notice of any civil action under this Section on  
15 the Commission and provide the Commission with a copy of  
16 its complaint, except that if it is not feasible for the  
17 Attorney General to provide such prior notice, the  
18 Attorney General shall serve written notice immediately  
19 on instituting such action.

20           (2) Rights of Commission. On receiving a notice  
21 with respect to a civil action under paragraph (1), the  
22 Commission shall have the right:

23                   (A) to intervene in the action;

24                   (B) upon so intervening, to be heard in all  
25 matters arising therein; and

26                   (C) to file petitions for appeal.

27       (c) Actions by Commission. Whenever a civil action has  
28 been instituted by or on behalf of the Commission for  
29 violation of a provision of Section 17 or 35, the Attorney  
30 General may, during the pendency of such action, institute a  
31 civil action under this Section against any defendant named  
32 in the complaint in such action for violation of any  
33 provision as alleged in the complaint.

34       (d) Construction. For purposes of bringing a civil

1 action under subsection (a), nothing in this Section shall  
2 prevent the Attorney General from exercising the powers  
3 conferred on the Office of the Illinois Attorney General to  
4 conduct investigations or to administer oaths or affirmations  
5 or to compel the attendance of witnesses or the production of  
6 documentary or other evidence.

7 (e) Venue; service of process. Any civil action brought  
8 under paragraph (1) may be brought in the county in which the  
9 defendant or in which the interactive computer service  
10 provider is located, is an inhabitant, or transacts business  
11 or wherever venue is proper under the Code of Civil  
12 Procedure. Process in such an action may be served in any  
13 district or county in which the defendant is an inhabitant or  
14 in which the defendant may be found.

15 (g) Definition. In this Section, "Attorney General"  
16 means the Attorney General of Illinois.

17 (815 ILCS 511/30 new)

18 Sec. 30. Interactive computer service providers.

19 (a) Exemption for certain transmissions.

20 (1) Exemption. Section 17 or 35 shall not apply to  
21 a transmission of electronic mail by an interactive  
22 computer service provider unless:

23 (A) the provider initiates the transmission;

24 or

25 (B) the transmission is not made to its own  
26 customers.

27 (2) Construction. Nothing in this subsection may be  
28 construed to require an interactive computer service  
29 provider to transmit or otherwise deliver any electronic  
30 mail message.

31 (b) Actions by interactive computer service providers.

32 (1) In general. In addition to any other remedies  
33 available under any other provision of law, any

1 interactive computer service provider adversely affected  
2 by a violation of a provision of Section 17 or 35 may,  
3 within one year after discovery of the violation, bring a  
4 civil action against a person who violates such  
5 provision. Such an action may be brought to enjoin the  
6 violation, to enforce compliance with such provision, to  
7 obtain damages, or to obtain such further and other  
8 relief as the court considers appropriate.

9 (2) Damages.

10 (A) In general. The amount of damages in an  
11 action under this subsection for a violation  
12 specified in paragraph (1) may not exceed \$15,000  
13 per violation.

14 (B) Relationship to other damages. Damages  
15 awarded for a violation under this subsection are in  
16 addition to any other damages awardable for the  
17 violation under Section 10 of this Act.

18 (C) Costs and fees. The court may, in issuing  
19 any final order in any action brought under  
20 paragraph (1), award costs of suit, reasonable costs  
21 of obtaining service of process, reasonable attorney  
22 fees, and expert witness fees for the prevailing  
23 party.

24 (3) Venue; service of process. Any civil action  
25 brought under paragraph (1) may be brought in the county  
26 in which the defendant or in which the interactive  
27 computer service provider is located, is an inhabitant,  
28 or transacts business or wherever venue is proper under  
29 the Code of Civil Procedure. Process in such an action  
30 may be served in any county in which the defendant is an  
31 inhabitant or in which the defendant may be found.

32 (c) Interactive computer service provider defined. In  
33 this Section, "interactive computer service provider" has the  
34 meaning given the term "interactive computer service" in

1 Section 230(e)(2) of the Communications Act of 1934 (47  
2 U.S.C. 230(e)(2)).

3 (815 ILCS 511/35 new)

4 Sec. 35. Receipt of transmissions by private persons.

5 (a) Termination of transmissions. A person who receives  
6 from any other person an electronic mail message requesting  
7 the termination of further transmission of commercial  
8 electronic mail shall cease the initiation of further  
9 transmissions of such mail to the person making the request.

10 (b) Affirmative authorization of transmissions.

11 (1) In general. Subject to paragraph (2), a person  
12 may authorize another person to initiate transmissions of  
13 unsolicited commercial electronic mail to the person.

14 (2) Availability of termination. A person  
15 initiating transmissions of electronic mail under  
16 paragraph (1) shall include, with each transmission of  
17 such mail to a person authorizing the transmission under  
18 that paragraph, the information specified in Section  
19 17(a)(2)(c).

20 (c) Constructive authorization of transmissions.

21 (1) In general. Subject to paragraphs (2) and (3),  
22 a person who secures a good or service from, or otherwise  
23 responds electronically to, an offer in a transmission of  
24 unsolicited commercial electronic mail shall be deemed to  
25 have authorized the initiation of transmissions of  
26 unsolicited commercial electronic mail from the person  
27 who initiated the transmission.

28 (2) No authorization for requests for termination.  
29 An electronic mail request to cease the initiation of  
30 further transmissions of electronic mail under subsection  
31 (a) shall not constitute authorization for the initiation  
32 of further electronic mail under this subsection.

33 (3) Availability of termination. A person



1 initiating transmissions of electronic mail under  
2 paragraph (1) shall include, with each transmission of  
3 such mail to a person deemed to have authorized the  
4 transmission under that paragraph, the information  
5 specified in Section 17(a)(2)(c).

6 (d) Operation. Subsections (a), (b)(2), and (c)(3)  
7 become operative 30 days after the effective date of this  
8 amendatory Act of the 92nd General Assembly.

9 (815 ILCS 511/40 new)

10 Sec. 40. Additional definitions. As used in Sections 17  
11 through 35 and in this Section:

12 "Commercial electronic mail" means any electronic mail  
13 that:

14 (i) contains an advertisement for the sale of a  
15 product or service;

16 (ii) contains a solicitation for the use of a  
17 telephone number, the use of which connects the user to a  
18 person or service that advertises the sale of or sells a  
19 product or service; or

20 (iii) promotes the use of or contains a list of one  
21 or more Internet sites that contain an advertisement  
22 referred to in subparagraph (i) or a solicitation  
23 referred to in subparagraph (ii).

24 "Initiate the transmission" in the case of an electronic  
25 mail message means to originate the electronic mail message,  
26 and does not encompass any intervening interactive computer  
27 service whose facilities may have been used to relay, handle,  
28 or otherwise retransmit the electronic mail message, unless  
29 the intervening interactive computer service provider  
30 knowingly and intentionally retransmits any electronic mail  
31 in violation of Section 17 or 35.

32 "Commission" means the Illinois Commerce Commission.

1 INDEX

2 Statutes amended in order of appearance

3 815 ILCS 511/10

4 815 ILCS 511/17 new

5 815 ILCS 511/20 new

6 815 ILCS 511/25 new

7 815 ILCS 511/30 new

8 815 ILCS 511/35 new

9 815 ILCS 511/40 new