

ASSEMBLY, No. 3393

STATE OF NEW JERSEY

211th LEGISLATURE

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Sponsored by:

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SYNOPSIS

The "New Jersey Spam Deterrence Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the transmission of certain commercial electronic
2 mail and supplementing chapter 20 of Title 2C of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 "Act" means the "New Jersey Spam Deterrence Act."

10 "Commercial electronic mail message" means an electronic message
11 sent primarily for the purpose of commercial advertisement or
12 promotion of:

13 a. a commercial product;

14 b. a commercial service;

15 c. the content on an Internet website; or

16 d. a website operated for a commercial purpose.

17 "Domain name" means any alphanumeric designation that is
18 registered with or assigned by a domain name registrar, domain name
19 registry, or other domain name registration authority, as part of an
20 electronic mail address on the Internet.

21 "Electronic mail service provider" means any person, including an
22 Internet service provider, that is an intermediary in sending and
23 receiving electronic mail and that provides to the public the ability to
24 send or receive electronic mail to or from an electronic mail account
25 or online user account.

26 "Header information" means the source, destination, and routing
27 information attached to an electronic mail message, including the
28 originating domain name and originating electronic mail address and
29 any other information that appears in the line identifying or purporting
30 to identify a person initiating the message, and technical information
31 that authenticates the sender of an electronic mail message for network
32 security or network management purposes.

33 "Initiate," when used with respect to a commercial electronic mail
34 message, means to originate or transmit the message or to procure the
35 origination or transmission of the message and does not include
36 actions that constitute routine conveyance of such message.

37 "Internet" means the international computer network of both federal
38 and nonfederal interoperable packet switched data networks.

39 "Internet protocol address" means the string of numbers by which
40 a location on the Internet is identified by routers or other computers
41 connected to the Internet.

42 "Internet service provider" means any business or organization
43 qualified to do business in this State that provides individuals,
44 corporations, or other entities with the ability to connect to the
45 Internet through equipment that is located in this State.

46 "Materially falsify" means to alter or conceal in a manner that

1 would impair the ability of one of the following to identify, locate, or
2 respond to a person who initiated an electronic mail message or to
3 investigate an alleged violation of this act:

- 4 a. a recipient of the message;
- 5 b. an Internet service provider processing the message on behalf of
6 a recipient;
- 7 c. a person alleging a violation of this act; or
- 8 d. a law enforcement agency.

9 "Multiple" means:

- 10 a. more than 10 commercial electronic mail messages during a
11 24-hour period;
- 12 b. more than 100 commercial electronic mail messages during a
13 30-day period; or
- 14 c. More than 1,000 commercial electronic mail messages during a
15 one-year period.

16 "Protected computer" means a computer used in intrastate or
17 interstate communication.

18 "Routine conveyance" means the transmission, routing, relaying,
19 handling, or storing, through an automatic technical process, of an
20 electronic mail message for which another person has identified the
21 recipients or provided the recipients' addresses.

22
23 2. A person shall not purposely or knowingly:

24 a. Use a protected computer of another to relay or retransmit
25 multiple commercial electronic mail messages with the intent to
26 deceive or mislead recipients or an electronic mail service provider as
27 to the origin of the message;

28 b. Materially falsify header information in multiple commercial
29 electronic mail messages and intentionally initiate the transmission of
30 such messages;

31 c. Register, using information that materially falsifies the identity
32 of the actual registrant, for 15 or more electronic mail accounts or
33 on-line user accounts or two or more domain names and intentionally
34 initiate the transmission of multiple commercial electronic mail
35 messages from one or any combination of accounts or domain names;
36 or

37 d. Falsely represent the right to use five or more Internet protocol
38 addresses and intentionally initiate the transmission of multiple
39 commercial electronic mail messages from the Internet protocol
40 addresses.

41
42 3. a. A person who violates section 2 of this act is guilty of a crime
43 of the fourth degree and upon conviction is subject to imprisonment
44 not exceeding 18 months or a fine not exceeding \$10,000, or both.

45 b. A person who violates section 2 of this act involving the
46 transmission of more than 250 commercial electronic mail messages

1 during a 24-hour period, 2,500 commercial electronic mail messages
2 during any 30-day period, or 25,000 commercial electronic mail
3 messages during any one-year period is guilty of a crime of the third
4 degree and upon conviction is subject to imprisonment not exceeding
5 five years or a fine not exceeding \$15,000, or both.

6 c. A person who violates subsection c. or subsection d. of section
7 2 of this act involving 20 or more electronic mail accounts or 10 or
8 more domain names and intentionally initiates the transmission of
9 multiple commercial electronic mail messages from the accounts or
10 using the domain names is guilty of a crime of the third degree and
11 upon conviction is subject to imprisonment not exceeding five years or
12 a fine not exceeding \$15,000, or both.

13 d. A person who violates section 2 of this act that causes a loss of
14 \$500 or more during any one-year period is guilty of a crime of the
15 fourth degree and upon conviction is subject to imprisonment not
16 exceeding 18 months or a fine not exceeding \$10,000, or both.

17 e. A person who violates section 2 of this act in concert with three
18 or more other persons as the leader or organizer of the action that
19 constitutes the violation is guilty of a crime of the third degree and
20 upon conviction is subject to imprisonment not exceeding five years or
21 a fine not exceeding \$15,000, or both.

22 f. A person who violates section 2 of this act in furtherance of a
23 crime, or who has previously been convicted of an offense under the
24 laws of this State, another state, or under any federal law involving the
25 transmission of multiple commercial electronic mail messages is guilty
26 of a crime of the second degree and upon conviction is subject to
27 imprisonment not exceeding 10 years or a fine not exceeding
28 \$150,000, or both.

29

30 4. In addition to any other sentence authorized by law, the
31 Superior Court may direct that a person convicted of a violation of
32 this act forfeit to the State:

33 a. Any moneys and other income, including all proceeds earned but
34 not yet received by a defendant from a third party as a result of the
35 defendant's violation of this act; and

36 b. All computer equipment, computer software, and personal
37 property used in connection with a violation of this act known by the
38 owner to have been used in violation of this act.

39

40 5. a. An action brought under this act shall be commenced within
41 two years after the commission of the act.

42 b. The Attorney General may institute a civil action in the Superior
43 Court against a person who violates this act to recover a civil penalty
44 not exceeding:

45 (1) \$25,000 per day of violation; or

46 (2) not less than \$2 nor more than \$8 per commercial electronic

1 mail message initiated in violation of this act.

2 c. The Attorney General may seek an injunction in a civil action to
3 prohibit a person who has engaged in or is engaged in a violation of
4 this act from engaging in the conduct prohibited by this act.

5 d. The Attorney General may enforce criminal violations of this
6 act.

7

8 6. Nothing in this act shall be construed to have any effect on the
9 lawfulness of the adoption, implementation, or enforcement by an
10 electronic mail service provider of a policy of declining to transmit,
11 route, relay, handle, or store certain types of electronic mail messages
12 under any other provision of law.

13

14 7. Nothing in this act shall prohibit, prevent or limit, in any manner,
15 any registered user, electronic mail service provider, or Internet
16 service provider from pursuing any other remedy available under any
17 other applicable provision of law.

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19 8. This act shall take effect on the 120th day after enactment.

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22 STATEMENT

23

24 The bill prohibits a person from purposely or knowingly: 1) using
25 a protected computer of another to relay or retransmit multiple
26 commercial electronic mail ("e-mail") messages with the intent to
27 deceive or mislead recipients or an e-mail service provider as to the
28 messages' origin; 2) materially falsifying header information in multiple
29 commercial e-mail messages and intentionally initiating the
30 transmission of the messages; 3) registering, using false information,
31 for 15 or more e-mail accounts or online user accounts or two or more
32 domain names and intentionally initiating the transmission of multiple
33 commercial e-mail messages from one or any combination of accounts
34 or domain names; or 4) falsely representing the right to use five or
35 more Internet protocol addresses and intentionally initiating the
36 transmission of multiple commercial e-mail messages from the
37 Internet protocol addresses. Under the bill, "multiple" means: (1)
38 more than 10 commercial e-mail messages during a 24-hour period; (2)
39 more than 100 commercial e-mail messages during a 30-day period; or
40 (3) more than 1,000 commercial e-mail messages during a one-year
41 period. A "protected computer" means a computer used in intrastate
42 or interstate communication.

43

44 Violation of the bill's provisions is generally a crime of the third
45 degree with maximum penalties of up to five years' imprisonment
46 and/or a \$15,000 fine, or a crime of the fourth degree with maximum
penalties of up to 18 month's imprisonment and/or a \$10,000 fine,

1 except that violation of provisions by a person who has previously
2 been convicted of an offense involving the transmission of multiple
3 commercial e-mail messages is a crime of the second degree subject to
4 maximum penalties of 10 years' imprisonment and/or a \$150,000 fine.

5 In addition, the Superior Court may direct a person convicted of
6 violating the bill to forfeit to the State: (1) any money and other
7 income received as a result of the person's violation; and (2) all
8 computer equipment, software, and other personal property known by
9 the owner to have been used in connection with a violation.

10 The Attorney General may institute a civil action against a violator
11 to recover for the State a civil penalty of up to: (1) \$25,000 per day
12 of the violation; or (2) from \$2 to \$8 per commercial e-mail message
13 initiated in violation of the bill. The Attorney General may also seek
14 an injunction to prohibit further violation of the bill. A civil action or
15 an action enforcing criminal violations must be brought within two
16 years after the commission of the violation.