

# ASSEMBLY, No. 2030

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRAURY 5, 2004

**Sponsored by:**

**Assemblyman ANTHONY IMPREVEDUTO**

**District 32 (Bergen and Hudson)**

**Assemblyman WILFREDO CARABALLO**

**District 29 (Essex and Union)**

**Assemblyman ROBERT GORDON**

**District 38 (Bergen)**

**SYNOPSIS**

Establishes certain penalties for transmission of unsolicited commercial electronic mail.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 10/19/2004)

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

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 "Commercial electronic mail" means a message sent via a computer  
9 network to one or more recipients that contains an advertisement as  
10 defined in section 1 of P.L.1960, c.39 (C.56:8-1) but does not include  
11 or refer to the transmission of any documents by a telecommunications  
12 company or Internet service provider to the extent that the  
13 telecommunications company or Internet service provider merely  
14 carries that transmission over its network.

15 "Computer network" or "network" means any system or equipment  
16 that provides communications between one or more computer systems  
17 and input and output devices including, but not limited to, display  
18 terminals and printers connected by telecommunication facilities and  
19 shall include the Internet.

20 "Computer system" means a device or collection of devices,  
21 including support devices and excluding calculators that are not  
22 programmable and capable of being used in conjunction with external  
23 files, one or more of which contain computer programs, electronic  
24 instructions, input data and output data, that performs functions  
25 including, but not limited to, logic, arithmetic, data storage and  
26 retrieval, communication and control.

27 "Electronic mail address" means a destination commonly expressed  
28 as a string of characters to which electronic mail may be sent or  
29 delivered.

30 "Electronic mail service provider" or "provider" means any business  
31 or organization qualified to do business in this State that provides  
32 individuals, corporations, or other entities the ability to send or receive  
33 electronic mail through equipment located in this State and that is an  
34 intermediary in sending or receiving electronic mail.

35 "Electronic mail transmission information" means the information  
36 used to identify and distinguish the source of an electronic mail  
37 transmission including, but not limited to, Internet domain name,  
38 electronic mail address, or any other identifying information of an  
39 individual, corporation, or entity.

40 "Existing business or personal relationship" means that a registered  
41 user has provided express consent to receive commercial electronic  
42 mail from an electronic mail service provider or Internet service  
43 provider, the registered user has purchased or leased real property,  
44 goods or services from the sender of unsolicited commercial electronic  
45 mail, which concerns the purchase or lease and is sent within the  
46 warranty period or within thirteen months after the date of purchase

1 or lease, whichever period is a greater length of time, or the registered  
2 user has an ongoing contractual relationship with the sender of  
3 unsolicited commercial electronic mail which concerns the contract.

4 "Internet" means the international computer network of both federal  
5 and non-federal interoperable packet switched data networks.

6 "Internet domain name" means a globally unique, hierarchical  
7 reference to an Internet host or service, assigned through centralized  
8 Internet naming authorities, comprising a series of character strings  
9 separated by periods, with the rightmost character string specifying the  
10 top of the hierarchy.

11 "Internet service provider" or "provider" means any business or  
12 organization qualified to do business in this State that provides  
13 individuals, corporations, or other entities with the ability to connect  
14 to the Internet through equipment that is located in this State.

15 "Registered user" means any individual, corporation, or other  
16 entity, that maintains an electronic mail address with an electronic mail  
17 service provider or Internet service provider.

18 "Unsolicited commercial electronic mail" means any unsolicited  
19 electronic mail message that is sent for the purpose of encouraging the  
20 purchase, lease, rental, offer, investment or other disposition of  
21 property, goods, services or extension of credit or any electronic mail  
22 message that is addressed and sent to a recipient with whom the sender  
23 of the message does not have an existing business or personal  
24 relationship and that has been sent by the sender without the express  
25 consent of the recipient.

26

27 2. A person is guilty of a crime of the fourth degree if the person  
28 purposely or knowingly:

29 a. utilizes or causes to be utilized any computer or computer  
30 network with the intent to falsify or forge any electronic mail  
31 transmission information or other routing information to transmit, or  
32 cause to be transmitted, unsolicited commercial electronic mail  
33 through or into the computer network of an electronic mail service  
34 provider, or Internet service provider or their registered users; or

35 b. sells, gives, or otherwise distributes or possesses, with the intent  
36 to sell, give, or distribute software that is primarily designed or  
37 produced for the purpose of facilitating or enabling the falsification of  
38 electronic mail transmission information or other routing information,  
39 which has only limited commercially significant purpose or use other  
40 than to facilitate or enable the falsification of electronic mail  
41 transmission information or other routing information, or is marketed  
42 by that person acting, alone or with another, for use in facilitating or  
43 enabling the falsification of electronic mail transmission information or  
44 other routing information.

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46 3. A person is guilty of a crime of the third degree if the person

1 purposely or knowingly commits an offense under section 2 of this act  
2 where:

3 a. the volume of unsolicited commercial electronic mail transmitted  
4 exceeds 10,000 recipients or attempted recipients in any 24-hour  
5 period, or 100,000 recipients or attempted recipients in any 30-day  
6 time period, or one million recipients or attempted recipients in any  
7 one-year time period; or

8 b. the revenue generated from a specific transmission of unsolicited  
9 commercial electronic mail exceeds \$1,000 or the total revenue  
10 generated from the entirety of transmissions of unsolicited commercial  
11 electronic mail to any electronic mail service provider or Internet  
12 service provider, or their registered users exceeds \$50,000.

13

14 4. A person is guilty of a crime of the third degree if the person  
15 purposely or knowingly hires, employs, uses or permits any minor to  
16 assist in transmitting or causing to transmit unsolicited commercial  
17 electronic mail in violation of section 3 of this act.

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19 5. Any electronic mail service provider, Internet service provider,  
20 or registered user damaged in business or property or who suffers any  
21 type of loss as a result of the transmission of unsolicited commercial  
22 electronic mail, may bring the appropriate action in the Superior Court  
23 of New Jersey of the county in which the electronic equipment is  
24 located, or where the terminal used in accessing the equipment is  
25 situated, or where the actual damage occurs, to recover the actual  
26 monetary loss suffered by that provider or user by reason of that  
27 violation, or damages in the amount of \$50 for each instance the  
28 person utilized the equipment of an electronic mail service provider or  
29 Internet service provider to transmit unsolicited commercial electronic  
30 mail. A person who violates the provisions of this act may also be  
31 subject to injunctive relief, reasonable attorney's fees and costs, or  
32 such other equitable relief as considered just and appropriate by the  
33 Court.

34

35 6. A registered user who is the recipient of unsolicited commercial  
36 electronic mail, may file a formal complaint to the Attorney General of  
37 the State of New Jersey and shall be awarded appropriate damages,  
38 except that an electronic mail service provider or Internet service  
39 provider shall not be liable for the transmission of unsolicited  
40 commercial electronic mail where the provider took action in good  
41 faith to prevent the unsolicited transmission or where the facilities of  
42 an electronic mail service provider or Internet service provider are  
43 utilized to handle, transmit, retransmit, or relay unsolicited commercial  
44 electronic mail without the provider's actual knowledge that such  
45 transmission is prohibited by this act.

1       7. Every sentence imposed upon a conviction pursuant to sections  
2 2 through 4 of this act may include the seizure of all moneys and other  
3 income, including all proceeds earned but not yet received by a person  
4 convicted under this act from a third party, and all computer  
5 equipment, software equipment, and all personal property used in  
6 connection with any violation of section 2 through 4 of this act.

7  
8       8. Nothing in this act shall prohibit, prevent or limit, in any manner,  
9 any registered user, electronic mail service provider or Internet service  
10 provider from pursuing any other remedy available under any other  
11 applicable provision of law.

12  
13       9. This act, or part of this act, shall become inoperative on and  
14 after the date that a federal law or regulation is enacted that prohibits  
15 or otherwise regulates the transmission of unsolicited commercial  
16 electronic mail.

17  
18       10. This act shall take effect on the 120th day after enactment.

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#### STATEMENT

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23       The transmission of unsolicited commercial electronic mail has  
24 grown into a costly and time consuming nuisance for the citizens of  
25 this State. Unsolicited commercial electronic mail exhausts time to  
26 download from the Internet, and depending upon a recipient's  
27 arrangement for accessing the Internet, may cause a recipient to incur  
28 charges and access fees. Furthermore, given the volume of electronic  
29 mail, there is also a time-consuming element for a recipient in reading  
30 and deleting unwanted solicitations. Subsequently, there is a cost  
31 shifting that occurs between the recipient and the advertiser when  
32 unsolicited commercial electronic mail is transmitted; that is, the cost  
33 borne by the recipient is greater to that borne by the sender.

34       This bill would criminalize: (1) the use of false or forged electronic  
35 mail information or other routing information in the transmission of  
36 unsolicited commercial electronic mail; and (2) the distribution of  
37 software designed primarily for falsification of electronic mail  
38 transmission information or other routing information. In addition, the  
39 bill would provide that the assets of a person convicted of transmitting  
40 large quantities of unsolicited commercial electronic mail involving  
41 falsification of electronic mail transmission information or other  
42 routing information may be seized by the authorities.

43       This bill would also permit any electronic mail service provider,  
44 Internet service provider or registered user, damaged in business or  
45 property or who suffers any type of loss as a result of transmission of  
46 unsolicited commercial electronic mail, to bring the appropriate action

**A2030 IMPREVEDUTO, CARABALLO**

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1 in the Superior Court of New Jersey for actual damages, or \$50 for each  
2 transmission of unsolicited commercial electronic mail, as well as  
3 injunctive relief, reasonable attorney's fees and costs, or such other  
4 equitable relief.

5 This bill would also permit a registered user who is the recipient of  
6 unsolicited commercial electronic mail, to file a formal complaint to  
7 the Attorney General of the State of New Jersey seeking an award of  
8 damages.