

No. 2002-222

AN ACT

HB 2614

Prohibiting certain facsimiles, commercial electronic transmissions and the use of text, graphic or image messaging systems of wireless telephone systems to transmit unsolicited commercial messages; imposing penalties; authorizing the blocking of commercial electronic mail by interactive computer service; and providing for the powers of the Attorney General.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Unsolicited Telecommunication Advertisement Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Assist a transmission.” Action taken by a person to provide substantial assistance or support which enables another person to formulate, compose, send, originate, initiate or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the indicator of the commercial electronic mail message is engaged or intends to engage in any practice that violates the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. This term does not include action by a provider of Internet access or electronic mail service for mere transmission or hosting services in the ordinary course of business.

“Commercial electronic mail message.” An electronic mail message sent for the purpose of promoting real property, goods or services. The term does not include an electronic mail transmission:

(1) to which an interactive computer service has attached an advertisement in exchange for free use of an electronic mail account when the sender has agreed to such an arrangement; or

(2) sent as a result of an established business relationship.

“Electronic mail address.” A destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

“Electronic mail service.” A person who is an intermediary in sending or receiving electronic mail or who provides end-users of electronic mail services the ability to send or receive electronic mail.

“Established business relationship.” A prior or existing relationship formed by a voluntary two-way communication initiated by a person or entity and a recipient, with or without an exchange of consideration, on the

basis of an inquiry, application, purchase or transaction by the recipient regarding products or services offered by such persons or entity. In regard to an inquiry, the person or entity shall obtain the consent of a recipient beyond the initial inquiry. An established business relationship does not exist if the recipient requests to be removed from the distribution lists of an initiator pursuant to section 3(a)(4).

“Fax.” The transmission of the facsimile of a document through a connection with a telephone or computer network.

“Initiate a transmission.” Action by the original sender of an electronic mail message, excluding action by any intervening interactive computer service that may handle or retransmit the message unless such intervening interactive computer service of an electronic mail message when it knows or consciously avoids knowing that the person initiating the transmission is engaged or intends to engage in any act or practice that violates the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. The term does not include action by a provider of Internet access or electronic mail service for mere transmission or hosting services in the ordinary course of business.

“Internet domain name.” A globally unique hierarchical reference to an Internet host or service assigned through centralized Internet naming authorities and comprising a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

“Wireless advertisement.” The initiation of a telephone call or a message capable of providing text, graphic or image messages by a commercial mobile service provider, unlicensed wireless services provider or common carrier wireless exchange access service provider for the purpose of marketing goods or services. The term does not include a call or message to a person with that person’s prior express invitation or permission or to a person with whom the caller has an established business relationship.

Section 3. Prohibition of unsolicited or misleading commercial electronic mail messages and faxes.

(a) General rule.—No person may initiate a transmission or conspire with another person to initiate a transmission or assist a transmission of an unsolicited commercial electronic mail message or fax from a computer or fax machine located in this Commonwealth or to an electronic mail address that:

(1) uses a third party’s Internet domain name in the return electronic mail message without permission of the third party;

(2) includes false or misleading information in the return address portion of the electronic mail, facsimile or wireless advertisement such that the recipient would be unable to send a reply message to the original authentic sender;

(3) contains false or misleading information in the subject line; or

(4) fails to operate a valid sender-operated return e-mail address or toll-free telephone number that the recipient of the unsolicited documents may e-mail or call to notify the sender not to transmit further unsolicited documents.

(b) Covered mobile telephone messaging systems.—No person may use a covered mobile telephone messaging system to transmit an unsolicited commercial electronic mail message.

Section 4. Other conduct.

It shall be deemed a violation of this act for a person to:

(1) Conspire with another person to initiate the transmission of a commercial electronic mail message, fax or wireless advertisement that uses a third party's Internet domain name without permission of the third party or to otherwise misrepresent or obscure any information identifying the point of origin or the transmission path of a commercial electronic mail message.

(2) Falsify or forge commercial electronic mail, fax or wireless transmission or other routing information in any manner in connection with the transmission of unsolicited commercial electronic mail or wireless advertisement.

(3) Assist in the transmission of a commercial electronic mail message, fax or wireless advertisement when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or fax is engaged or intends to engage in any act or practice that violates the provisions of this act.

(4) Temporarily or permanently remove, alter, halt or otherwise disable any computer or wireless data, programs software or network to initiate a commercial electronic mail message, fax or wireless advertisement.

(5) Sell, give or otherwise distribute or possess with the intent to sell, give or distribute software that is primarily designed or produced for the purposes of facilitating or enabling falsification of commercial electronic mail, fax or wireless advertisement transmissions.

Section 5. Violations.

(a) Other law.—A violation of this act shall constitute a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(b) Procedure.—All actions of the Office of Attorney General under this act shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Section 6. Blocking of commercial electronic mail.

(a) Discretionary right.—

(1) A person who provides electronic mail service or a wireless telecommunication company may upon its own initiative block or filter the receipt or transmission through its service of any commercial

electronic mail or wireless advertisement that it reasonably believes is or may be sent in violation of this act.

(2) Nothing in this act shall be construed to prevent or limit in any way a person who provides Internet access or electronic mail service or a wireless telecommunications company from:

(i) adopting a policy regarding commercial or other electronic mail, including a policy of blocking, filtering or declining to transmit certain types of electronic mail messages;

(ii) suspending or terminating the services or accounts of any person deemed in violation of this act; or

(iii) enforcing such policy through technology, contract or pursuant to any remedy available under any provision of law.

(b) Immunity.—No person who provides Internet access or electronic mail service or wireless telecommunication company may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is or may be sent in violation of this act.

Section 7. Remedies available to consumers.

Nothing in this act shall be construed to limit the remedies available to consumers, the Attorney General or any district attorney under the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, or any other Federal or State law.

Section 8. Investigation, enforcement and reporting.

(a) Right of action.—

(1) The Bureau of Consumer Protection in the Office of Attorney General shall investigate any complaints received concerning violations of this act. If, after investigating any complaint, the Attorney General finds that there has been a violation of this act, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, under the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(2) The Attorney General shall remit 10% of any civil penalty collected under this section to the person filing the complaint leading to the civil penalty. In no event, however, shall the amount of this remittance exceed \$100 for any person.

(3) Any Internet access provider, electronic mail service provider or wireless telecommunication company aggrieved by a violation of this act shall have the right to initiate an action to enjoin such violation and to recover damages in the amount of no less than \$1 or more than \$10 per violation. For the purpose of this section, each unsolicited commercial electronic mail, facsimile or wireless advertisement received constitutes a separate violation.

(i) For willful violations of this act the court may, in its discretion, increase the amount of the award to an amount not exceeding \$1,500,000.

(ii) Notwithstanding any other provision of the law to the contrary, in addition to any damages awarded, such person may be awarded reasonable attorney fees and court costs.

(b) Annual report to General Assembly.—On or before November 30 of each year, the Attorney General shall submit to the General Assembly a report detailing investigations and enforcement actions taken under this act during the preceding fiscal year. The report shall include, but not be limited to:

- (1) The number of complaints received under this section.
- (2) The nature of those complaints.
- (3) The number of investigations and enforcement actions instituted by the Attorney General.
- (4) A summary of the results of those investigations.
- (5) Enforcement and the amount of any civil penalties collected.

(c) Investigative powers.—Prior to the institution of a civil action, the Attorney General may require the attendance and testimony of witnesses and the production of documents. For this purpose, the Attorney General may issue subpoenas, examine witnesses and receive evidence. If a person objects to or otherwise fails to comply with a subpoena or request for testimony, the Attorney General may file in Commonwealth Court an action to enforce the subpoena or request. Notice of hearing the action and a copy of all pleadings shall be served upon the person who may appear in opposition.

(d) Confidentiality to be maintained.—Any testimony taken or material produced under this act shall be kept confidential by the Attorney General except to the extent the Attorney General may use information in a judicial proceeding or if the disclosure is authorized by the court for good cause shown or confidentiality is waived by the person being investigated and by the person who has testified, answered interrogatories or produced materials.

Section 9. Effective date.

This act shall take effect in 90 days.

APPROVED—The 16th day of December, A.D. 2002.

MARK S. SCHWEIKER