

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 952

S.P. 318

In Senate, February 3, 1999

An Act to Reduce Unsolicited Communications from the Internet.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 10 MRSA c. 229 is enacted to read:

6 CHAPTER 229

8 UNSOLICITED INTERNET COMMUNICATIONS

10 §1500-K. Unsolicited electronic mail

12 1. Definitions. As used in this section, unless the
14 context otherwise indicates, the following terms have the
16 following meanings.

18 A. "Electronic mail advertisement" means any electronic mail
20 message, the principal purpose of which is to promote,
directly or indirectly, the sale or other distribution of
goods or services to the recipient.

22 B. "Electronic mail service provider" means any business or
24 organization qualified to do business in this State that
26 provides registered users the ability to send or receive
electronic mail through equipment located in this State and
28 that is an intermediary in sending or receiving electronic
mail.

30 C. "Initiation" means, with respect to an unsolicited
32 electronic mail advertisement, the action by the initial
34 sender of the electronic mail advertisement. "Initiation"
does not refer to the actions of any intervening electronic
mail service provider that may handle or retransmit the
electronic message.

36 D. "Registered user" means any individual, corporation or
38 other entity that maintains an electronic mail address with
an electronic mail service provider.

40 E. "Unsolicited electronic mail advertisement" means any
42 electronic mail advertisement that is:

44 (1) Addressed to a recipient with whom the initiator
does not have an existing business or personal
46 relationship; and

48 (2) Not sent at the request of or with the express
consent of the recipient.

50 2. Prohibitions. The following acts are prohibited.

2 A. No registered user of an electronic mail service
4 provider may use or cause to be used that electronic mail
6 service provider's equipment located in this State in
8 violation of the electronic mail service provider's policy
 prohibiting or restricting the use of its service or
 equipment for the initiation of unsolicited electronic mail
 advertisements.

10 B. No person may use or cause to be used, by initiating an
12 unsolicited electronic mail advertisement, an electronic
14 mail service provider's equipment located in this State in
16 violation of that electronic mail service provider's policy
 prohibiting or restricting the use of its equipment to
 deliver unsolicited electronic mail advertisements to its
 registered users.

18 3. Interpretation. An electronic mail service provider is
20 not required to create a policy prohibiting or restricting the
22 use of its equipment for the initiation or delivery of
24 unsolicited electronic mail advertisements. Nothing in this
26 section may be construed to limit or restrict the rights of an
 electronic mail service provider under 47 United States Code,
 Section 230(c) (1), or to limit or restrict any decision of an
 electronic mail service provider to permit or to restrict access
 to or use of its system or to limit or restrict any exercise of
 its editorial function.

28 4. Penalty. In addition to any other action available under
30 law, any electronic mail service provider whose policy on
32 unsolicited electronic mail advertisements is violated in a
34 manner described in this section may bring a civil action to
36 recover the actual monetary loss suffered by that provider by
 reason of that violation or liquidated damages of \$50 for each
 electronic mail message initiated or delivered in violation of
 this section, up to a maximum of \$25,000 per day, whichever
 amount is greater.

38 In any action brought pursuant to this section, the court may
40 award reasonable attorney's fees to a prevailing party. In any
42 action brought pursuant to this section, the electronic mail
44 service provider must establish as an element of its cause of
 action that prior to the alleged violation the defendant had
 actual notice of both of the following:

46 A. The electronic mail service provider's policy on
48 unsolicited electronic mail advertising; and

50 B. The fact that the defendant's unsolicited electronic
 mail advertisements would use or cause to be used the

2 electronic mail service provider's equipment located in this
3 State.

4 **§1500-L. Misuse of computer systems and networks**

6 1. Definitions. As used in this section, unless the
7 context otherwise indicates, the following terms have the
8 following meanings.

10 A. "Access" means to gain entry to, instruct or communicate
11 with the logical, arithmetical or memory function resources
12 of a computer, computer system or computer network.

14 B. "Computer contaminant" means any set of computer
15 instructions that is designed to modify, damage, destroy,
16 record or transmit information within a computer, computer
17 system or computer network without the intent or permission
18 of the owner of the information. "Computer contaminant"
19 includes, but is not limited to, a set of computer
20 instructions, commonly called viruses or worms, that is
21 self-replicating or self-propagating and is designed to
22 contaminate other computer programs or computer data;
23 consume computer resources; modify, destroy, record or
24 transmit data; or in some other fashion usurp the normal
25 operation of the computer, computer system or computer
26 network.

28 C. "Computer network" means any system that provides
29 communications between one or more computer systems and
30 input/output devices, including, but not limited to, display
31 terminals and printers connected by telecommunication
32 facilities.

34 D. "Computer program or software" means a set of
35 instructions or statements and related data that, when
36 executed in actual or modified form, cause a computer,
37 computer system or computer network to perform specified
38 functions.

40 E. "Computer services" includes, but is not limited to,
41 computer time, data processing, storage functions or other
42 uses of a computer, computer system or computer network.

44 F. "Computer system" means a device or collection of
45 devices, including support devices and excluding calculators
46 that are not programmable and capable of being used in
47 conjunction with external files, one or more of which
48 contain computer programs, electronic instructions, input
49 data and output data, that performs functions, including,
50 but not limited to, logic, arithmetic, data storage and
 retrieval, communication and control.

2 G. "Data" means a representation of information, knowledge,
4 facts, concepts, computer software, computer programs or
6 instructions. Data may be in any form, in storage media,
stored in the memory of the computer, in transit or
presented on a display device.

8 H. "Injury" means any alteration, deletion, damage or
10 destruction of a computer system, computer network, computer
program or data caused by access.

12 I. "Internet domain name" means a globally unique,
14 hierarchical reference to an Internet host or service,
16 assigned through centralized Internet naming authorities,
18 comprising a series of character strings separated by
periods, with the rightmost character string specifying the
top of the hierarchy.

20 J. "Victim expenditure" means any expenditure reasonably
22 and necessarily incurred by the owner or lessee of a
24 computer system, computer network, computer program or data
to verify that a computer system, computer network, computer
program or data was or was not altered, deleted, damaged or
destroyed by access.

26 2. Criminal offenses. Except as otherwise provided in this
28 section, no person may:

30 A. Knowingly access and without permission alter, damage,
32 delete, destroy or otherwise use any data, computer,
computer system or computer network in order to either:

34 (1) Devise or execute any scheme or artifice to
defraud, deceive or extort; or

36 (2) Wrongfully control or obtain money, property or
38 data;

40 B. Knowingly access and without permission take, copy or
42 make use of any data from a computer, computer system or
computer network, or take or copy any supporting
documentation, whether existing or residing inside or
outside a computer, computer system or computer network;

44 C. Knowingly and without permission use or cause to be used
46 computer services;

48 D. Knowingly access and without permission add, alter,
50 damage, delete or destroy any data, computer software or
computer programs that reside or exist inside or outside a
computer, computer system or computer network;

2 E. Knowingly and without permission disrupt or cause the
4 disruption of computer services or deny or cause the denial
6 of computer services to an authorized user of a computer,
8 computer system or computer network;

10 F. Knowingly and without permission provide or assist in
12 providing a means of accessing a computer, computer system
14 or computer network;

16 G. Knowingly and without permission access or cause to be
18 accessed any computer, computer system or computer network;

20 H. Knowingly introduce any computer contaminant into any
22 computer, computer system or computer network; or

24 I. Knowingly and without permission use the Internet domain
26 name of another individual, corporation or entity in
28 connection with the sending of one or more electronic mail
30 messages, and thereby damage or cause damage to a computer,
32 computer system or computer network.

34 3. Penalties. The following penalties apply to violations
36 of subsection 2.

38 A. A violation of any of the provisions of subsection 2,
40 paragraph A, B, D or E is a Class D crime.

42 B. A violation of subsection 2, paragraph C is punishable
44 as follows.

46 (1) A first violation is a Class E crime if the
48 violation does not result in injury and if the value of
the computer services used does not exceed \$400.

(2) A 2nd or subsequent violation is a Class D crime.

Any violation is a Class D crime if the violation results in
a victim expenditure in an amount greater than \$5,000 or in
an injury or if the value of the computer services used
exceeds \$400.

C. A violation of subsection 2, paragraph F, G or H is
punishable as follows.

(1) A first violation that does not result in injury
is a civil infraction for which a fine not exceeding
\$250 may be adjudged.

2 (2) A violation that results in a victim expenditure
3 in an amount not greater than \$5,000 or that is a 2nd
4 or subsequent violation is a Class E crime.

5 (3) A violation that results in a victim expenditure
6 in an amount greater than \$5,000 is a Class D crime.

7 D. A violation of subsection 2, paragraph I is punishable as
8 follows.

9 (1) A first violation that does not result in injury
10 is a civil infraction for which a fine not exceeding
11 \$250 may be adjudged.

12 (2) A violation that results in injury or that is a
13 2nd or subsequent violation is a Class E crime.

14 4. Further actions authorized. In addition to any other
15 civil remedy available, the owner or lessee of the computer,
16 computer system, computer network, computer program or data may
17 bring a civil action for compensatory damages against any person
18 adjudged or convicted of any violation of this section, including
19 compensation for any victim expenditure. For the purposes of
20 this subsection, the conduct of an unemancipated minor must be
21 imputed to the parent or legal guardian having control or custody
22 of the minor.

23 In any action brought pursuant to this subsection the court may
24 award reasonable attorney's fees to a prevailing party.

25 A community college, state university or academic institution
26 accredited in this State may include computer-related crimes as a
27 specific violation of college or university student conduct
28 policies and regulations that may subject a student to
29 disciplinary sanctions up to and including dismissal from the
30 academic institution.

31 5. Actions not precluded. Nothing in this section may be
32 construed:

33 A. To preclude the applicability of any other provision of
34 the criminal law of this State that applies or may apply to
35 any transaction; or

36 B. To make illegal any employee labor relations activities
37 that are within the scope and protection of state or federal
38 labor laws.

39 6. Forfeiture. Any computer, computer system, computer
40 network or any software or data owned by the defendant in any

2 action brought pursuant to this subsection, which was used during
3 the commission of any act prohibited under subsection 2, or any
4 computer owned by the defendant that is used as a repository for
5 the storage of software or data illegally obtained in violation
6 of subsection 2 is subject to forfeiture in accordance with the
7 procedures specified in Title 15, chapter 517.

8 7. Exemptions. A person is exempt from prosecution under
9 subsection 2 under the following circumstances.

10 A. A person is exempt from prosecution under subsection 2
11 if that person accesses that person's employer's computer
12 system, computer network, computer program or data when
13 acting within the scope of lawful employment.

14 B. A person is exempt from prosecution under subsection 2,
15 paragraph C if that person accesses or uses that person's
16 employer's computer system, computer network, computer
17 program or data when acting outside the scope of lawful
18 employment, so long as:

19 (1) The person's activities do not cause an injury to
20 the employer or another; or

21 (2) The value of supplies and computer services that
22 are used does not exceed \$100.

23 A person exempted from prosecution pursuant to this
24 paragraph who incidentally violates subsection 2, paragraph
25 B, D or G is also exempted from prosecution under those
26 paragraphs.

27 8. Jurisdiction. For purposes of bringing a civil or a
28 criminal action under this section, a person who causes, by any
29 means, access of a computer, computer system or computer network
30 in one jurisdiction from another jurisdiction is deemed to have
31 personally accessed the computer, computer system or computer
32 network in each jurisdiction.

33 9. Sentencing. In determining the terms and conditions of
34 sentencing a person convicted of a criminal violation of this
35 section, the court shall consider the following:

36 A. Violations of any prohibitions on access to and use of
37 computers; and

38 B. Except as otherwise required by law, alternate
39 sentencing, including community service, if the defendant
40 shows remorse and recognition of the wrongdoing and an
41 inclination not to repeat the offense.

2 1. Provides civil remedies for electronic mail providers
4 against registered users who use the provider's equipment located
6 in this State in violation of the provider's policy prohibiting
or restricting the use of its service or equipment for the
initiation of unsolicited electronic mail advertisements;

8 2. Provides civil remedies for electronic mail providers
10 against any person who initiates an unsolicited electronic mail
12 advertisement using the provider's equipment located in this
14 State in violation of that provider's policy prohibiting or
restricting the use of its equipment to deliver unsolicited
electronic mail advertisements to its registered users;

16 3. Establishes criminal penalties for a person who:

18 A. Knowingly accesses and without permission alters,
20 damages, deletes, destroys or otherwise uses any data,
22 computer, computer system or computer network in order to:

24 (1) Devise or execute any scheme or artifice to
26 defraud, deceive or extort; or

28 (2) Wrongfully control or obtain money, property or
30 data;

32 B. Knowingly accesses and without permission takes, copies
34 or makes use of any data from a computer, computer system or
36 computer network, or takes or copies any supporting
38 documentation, whether existing or residing inside or
40 outside a computer, computer system or computer network;

42 C. Knowingly and without permission uses or causes to be
44 used computer services;

46 D. Knowingly accesses and without permission adds, alters,
48 damages, deletes or destroys any data, computer software or
computer programs that reside or exist inside or outside a
computer, computer system or computer network;

 E. Knowingly and without permission disrupts or causes the
disruption of computer services or denies or causes the
denial of computer services to an authorized user of a
computer, computer system or computer network;

 F. Knowingly and without permission provides or assists in
providing a means of accessing a computer, computer system
or computer network;

- 2 G. Knowingly and without permission accesses or causes to
be accessed any computer, computer system or computer
network;
- 4
- 6 H. Knowingly introduces any computer contaminant into any
computer, computer system or computer network; or
- 8
- 10 I. Knowingly and without permission uses the Internet
domain name of another individual, corporation or entity in
connection with the sending of one or more electronic mail
messages, and thereby damages or causes damage to a
12 computer, computer system or computer network.