

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1538, L.D. 2041, Bill, "An Act to Control Internet "Spam""

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA c. 224 is enacted to read:

CHAPTER 224

ELECTRONIC MAIL SOLICITATION

§1497. Electronic mail solicitation restricted

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "E-mail" means electronic mail sent or delivered by transmission over the Internet.

B. "E-mail service provider" means a business or organization qualified to do business in this State that provides individuals, corporations or other entities the ability to send or receive e-mail through equipment located in this State or that is an intermediary in sending or receiving e-mail.

C. "Unsolicited commercial e-mail" means an e-mail, other than an e-mail sent at the request of the recipient, sent via an e-mail service provider to 2 or more recipients in this State with whom the sender does not have an existing business relationship for the purpose of:

2 (1) Offering real property, goods or services for sale
 or rent;

4 (2) Conveying information on real property, goods or
 services to solicit sales or purchase;

6 (3) Conveying information on the extension of credit;
8 or

10 (4) Promoting or soliciting charitable contributions.

12 "Unsolicited commercial e-mail" does not include an e-mail
14 message to which an e-mail service provider has attached an
16 advertisement if the e-mail service provider has an agreement
 with the recipient under which the e-mail service provider allows
 the recipient free use of an e-mail account in exchange for
 allowing the e-mail service provider to send such advertisements.

18 2. Requirements. A person sending unsolicited commercial
20 e-mail shall maintain a valid return e-mail address or a publicly
22 accessible site on the Internet to which or through which the
 recipient may provide notice to the sender that the recipient
 does not wish to receive any more unsolicited commercial e-mail.

24 3. Statement. All unsolicited commercial e-mail must
26 contain:

28 A. In the subject line:

30 (1) The first 4 characters as follows: "ADV:"; and

32 (2) If the unsolicited commercial e-mail contains
34 information about material that may be viewed only by a
 person at least 18 years of age, the first 8 characters
 as follows: "ADV:ADLT";

36 B. A statement informing the recipient of the name of the
38 person or entity from which the unsolicited commercial
 e-mail originated;

40 C. The return e-mail address or publicly accessible site on
42 the Internet required by subsection 2; and

44 D. A statement informing the recipient that the recipient
46 may use the return e-mail address or publicly accessible
 site on the Internet to notify the sender that the recipient
 does not want to receive any more unsolicited commercial
48 e-mails from the sender.

2 4. Prohibition. A person receiving notification from a
3 recipient that the recipient does not wish to receive any more
4 unsolicited commercial e-mails from that person shall cease to
5 send unsolicited commercial e-mails to that recipient. If a
6 recipient is the registered owner of more than one e-mail address
7 and notifies the sender of unsolicited commercial e-mails to
8 cease sending unsolicited commercial e-mails to all of the e-mail
9 addresses registered to that person or entity, the sender shall
10 cease to send unsolicited commercial e-mails to those addresses.

12 5. Penalty. Violation of this chapter is an unfair trade
13 practice as prohibited by Title 5, section 207. Each unsolicited
14 commercial e-mail transmission to a recipient in violation of
15 this chapter constitutes a separate violation. The Attorney
16 General shall establish procedures for receiving and
17 investigating complaints of violations of this chapter. The
18 procedures may include the development of electronic forms,
19 available over the Internet, by which a person may file a
20 complaint with the Attorney General alleging a violation of this
21 chapter.

22 6. Civil action; recipients. Notwithstanding Title 5,
23 section 213, a person who receives a commercial e-mail sent in
24 violation of this chapter may bring an action in an appropriate
25 state court for either or both of the following:

- 28 A. An injunction to stop future such e-mails; and
30 B. Recovery of actual damages from each violation or up to
31 \$500 in damages for each violation, whichever is greater.

32 If the court finds there has been a violation of this chapter,
33 the court shall award the petitioner reasonable attorney's fees
34 and costs incurred in connection with the action.

36 If the court finds that the defendant willfully or knowingly
37 violated this chapter, the court may, in its discretion, increase
38 the amount of the award to an amount equal to not more than 3
39 times the amount available under paragraph B.

42 7. Civil action; e-mail service providers. Notwithstanding
43 Title 5, section 213, an e-mail service provider through whose
44 service is sent a commercial e-mail in violation of this chapter
45 may bring an action in an appropriate state court for either or
46 both of the following:

- 48 A. An injunction to stop future such e-mails; and

2 B. Recovery of actual damages from each violation or up to
3 \$1,000 in damages for each violation, whichever is greater.

4 If the court finds there has been a violation of this chapter,
5 the court shall award the petitioner reasonable attorney's fees
6 and costs incurred in connection with the action.

8 If the court finds that the defendant willfully or knowingly
9 violated this chapter, the court may, in its discretion, increase
10 the amount of the award to an amount equal to not more than 3
11 times the amount available under paragraph B.

12 8. Immunity. An e-mail service provider may, upon its own
13 initiative, block the receipt or transmission through its service
14 of any commercial e-mail that it reasonably believes is or will
15 be sent in violation of this chapter. An e-mail service provider
16 is not liable for any action taken in good faith to block the
17 receipt or transmission through its service of any commercial
18 e-mail that it reasonably believes is or will be sent in
19 violation of this chapter.'

22 Further amend the bill by inserting at the end before the
23 summary the following:

26 **FISCAL NOTE**

28 The Department of the Attorney General will incur some minor
29 additional costs to establish procedures for receiving and
30 investigating electronic mail solicitation complaints. These
31 costs can be absorbed within the department's existing budgeted
32 resources.

34 The additional workload and administrative costs associated
35 with the minimal number of new cases filed in the court system
36 can be absorbed within the budgeted resources of the Judicial
37 Department. The collection of additional fines may increase
38 General Fund revenue by minor amounts.'

40 **SUMMARY**

42 This amendment replaces the bill. This amendment preserves
43 the main provisions of the original bill but clarifies and
44 modifies some of the language and adds some new provisions. This
45 amendment:

48 1. Modifies the definition of "unsolicited commercial
49 e-mail" to remove reference to social and political commentary

2 and to exclude e-mail from an e-mail service provider if the
3 service provider has an agreement with the recipient allowing the
4 sending of advertisements in exchange for free e-mail service;

6 2. Requires a person sending unsolicited commercial e-mail
7 to provide in the e-mail a valid return e-mail address or
8 Internet website through which the recipient may decline further
9 such e-mail but removes from the bill the requirements that the
10 sender provide a U.S. postal address and a toll-free telephone
11 number;

12 3. Requires unsolicited commercial e-mail to include
13 appropriate labels in the subject line so that recipients are
14 made aware that the e-mail is an unsolicited commercial e-mail
15 and whether it contains material suitable only for adults;

16 4. Provides that violations of these provisions constitute
17 unfair trade practices enforceable by the Attorney General and
18 also provides for civil actions for violations that may be
19 brought by recipients of the e-mails and by e-mail service
20 providers;

22 5. Removes from the bill the provision that would repeal
23 the law upon enactment of federal law on unsolicited commercial
24 e-mail; and

26 6. Adds a fiscal note to the bill.