

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

SENATE 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. "Commercial e-mail" means an e-mail that primarily advertises or promotes the commercial availability of a product or service for profit or invites the recipient to view content on a publicly accessible site on the Internet that is operated primarily for a commercial purpose. An e-mail may not be considered to be a commercial e-mail solely because that e-mail includes a reference to a commercial entity that serves to identify the initiator. "Commercial e-mail" does not include an e-mail to which an interactive computer service provider has attached an advertisement in exchange for free use of an e-mail account, when the sender has agreed to such an arrangement.

2 B. "E-mail" means electronic mail sent or delivered by
3 transmission over the Internet.

4
5 C. "E-mail service provider" means a business or
6 organization qualified to do business in this State that
7 provides individuals, corporations or other entities the
8 ability to send or receive e-mail through equipment located
9 in this State or that is an intermediary in sending or
10 receiving e-mail.

11 D. "Unsolicited commercial e-mail" does not include a
12 commercial e-mail when either of the following circumstances
13 exists:

14
15 (1) Within the 5-year period ending upon receipt of
16 such an e-mail, there has been a business transaction
17 between the sender and the recipient, including a
18 transaction involving the provision, free of charge, of
19 information requested by the recipient, of goods or of
20 services, and the recipient was, at the time of such
21 transaction or thereafter, provided a clear and
22 conspicuous notice of an opportunity not to receive
23 further messages from the sender and has not exercised
24 such opportunity; or

25 (2) The recipient has given the sender permission to
26 send a commercial e-mail to the electronic mail address
27 of the recipient and has not subsequently revoked such
28 permission.

29
30
31 2. Requirements. A person sending commercial e-mail shall
32 maintain a valid return e-mail address or a publicly accessible
33 site on the Internet to which or through which the recipient may
34 provide notice to the sender that the recipient does not wish to
35 receive any more commercial e-mail.

36
37 3. Statement. All unsolicited commercial e-mail must
38 contain:

39
40
41 A. In the subject line, if the unsolicited commercial
42 e-mail contains information about material that may be
43 viewed only by a person at least 18 years of age, the first
44 8 characters as follows: "ADV:ADLT";

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

48
49 C. The return e-mail address or publicly accessible site on
50

the Internet required by subsection 2; and

D. A statement informing the recipient that the recipient 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 e-mails from the sender.

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

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

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

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

B. Recovery of actual damages from each violation or up to \$600 in damages for each violation, whichever is greater.

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

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

7. Civil action; e-mail service providers. Notwithstanding Title 5, section 213, an e-mail service provider through whose

2 service is sent a commercial e-mail in violation of this chapter
3 may bring an action in an appropriate state court for either or
4 both of the following:

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

6 B. Recovery of actual damages from each violation or up to
7 \$1,000 in damages for each violation, whichever is greater.

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

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

18 8. Immunity. An e-mail service provider may, upon its own
19 initiative, block the receipt or transmission through its service
20 of any commercial e-mail that it reasonably believes is or will
21 be sent in violation of this chapter. An e-mail service provider
22 is not liable for any commercial e-mail that it did not initiate,
23 nor any action taken in good faith to block the receipt or
24 transmission through its service of any commercial e-mail that it
25 reasonably believes is or will be sent in violation of this
26 chapter.'

30 SUMMARY

31 This amendment replaces the bill. This amendment preserves
32 the main provisions of the original bill but clarifies and
33 modifies some of the language and adds some new provisions. This
34 amendment:

35 1. Adds a definition of "commercial e-mail";

36 2. Modifies the definition of "unsolicited commercial
37 e-mail";

38 3. Requires a person sending commercial e-mail to provide
39 in the e-mail a valid return e-mail address or Internet website
40 through which the recipient may decline further such e-mail but
41 removes from the bill the requirements that the sender provide a
42 U.S. postal address and a toll-free telephone number;

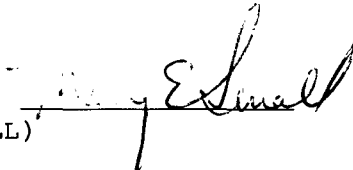
43 4. Provides that violations of these provisions constitute
44 unfair trade practices enforceable by the Attorney General and

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also provides for civil actions for injunctive relief and
monetary damages of up to \$600 for violations that may be brought
by recipients of the e-mails and by e-mail service providers;

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

6. Provides that an e-mail service provider is not liable
for any commercial e-mail it didn't initiate.

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(Senator SMALL)

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