

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

SENATE BILL 385

5 By: Senator Altes
6 By: Representative Creekmore
7

For An Act To Be Entitled

8
9
10 AN ACT TO REQUIRE AN ADVERTISING LABEL AND AN
11 OPT-OUT REQUIREMENT IN ELECTRONIC MAIL
12 SOLICITATIONS; TO ESTABLISH A STATEWIDE DATABASE
13 OF ELECTRONIC MAIL ADDRESSES OF SUBSCRIBERS WHO
14 OBJECT TO RECEIVING ELECTRONIC MAIL
15 SOLICITATIONS; TO PROHIBIT ANY PERSON FROM
16 SENDING AN ELECTRONIC MAIL SOLICITATION TO ANY
17 SUBSCRIBER IN THE DATABASE; AND FOR OTHER
18 PURPOSES.
19

Subtitle

20
21 AN ACT TO REQUIRE AN ADVERTISING LABEL
22 AND AN OPT-OUT REQUIREMENT IN ELECTRONIC
23 MAIL SOLICITATIONS; AND TO ESTABLISH A
24 STATEWIDE DATABASE OF ELECTRONIC MAIL
25 ADDRESSES OF SUBSCRIBERS WHO OBJECT TO
26 RECEIVING ELECTRONIC MAIL SOLICITATIONS.
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code § 5-41-201, concerning definitions regarding
32 computer crimes, is amended to read as follows:

33 5-41-201. Definitions.

34 For purposes of this subchapter:

35 (1) "Access" means to intercept, instruct, communicate with, store
36 data in, retrieve from, or otherwise make use of any resources of a computer,



1 network, or data;

2 (2)(A) "Computer" means an electronic, magnetic, electrochemical, or
 3 other high-speed data-processing device performing logical, arithmetic, or
 4 storage functions and includes any data storage facility or communications
 5 facility directly related to or operating in conjunction with the device.

6 (B) "Computer" also includes any on-line service, Internet
 7 service, local bulletin board, any electronic storage device, including a
 8 floppy disk or other magnetic storage device, or any compact disk that has
 9 read-only memory and the capacity to store audio, video, or written
 10 materials;

11 (3)(A) "Computer contaminant" means any data, information, image,
 12 program, signal, or sound that is designed or has the capability to:

13 (i) Contaminate, corrupt, consume, damage, destroy,
 14 disrupt, modify, record, or transmit; or

15 (ii) Cause to be contaminated, corrupted, consumed,
 16 damaged, destroyed, disrupted, modified, recorded, or transmitted any other
 17 data, information, image, program, signal, or sound contained in a computer,
 18 system, or network without the knowledge or consent of the person who owns
 19 the other data, information, image, program, signal, or sound or the
 20 computer, system, or network.

21 (B) "Computer contaminant" includes, but is not limited to:

22 (i) A virus, worm, or Trojan horse; or

23 (ii) Any other similar data, information, image, program,
 24 signal, or sound that is designed or has the capability to prevent, impede,
 25 delay, or disrupt the normal operation or use of any component, device,
 26 equipment, system, or network;

27 (4) "Data" means a representation of any form of information,
 28 knowledge, facts, concepts, or instructions which is being prepared or has
 29 been formally prepared and is intended to be processed, is being processed,
 30 or has been processed in a system or network;

31 (5) "Electronic mail solicitation" means any message initiated through
 32 an information service that:

33 (A) Is not requested or authorized by a subscriber; and

34 (B) Is for the purpose of encouraging the purchase, lease,
 35 rental of realty, goods, or services, or for the purpose of extending credit.

36 ~~(5)(6)~~ "Encryption" means the use of any protection or disruptive

1 measure, including, without limitation, cryptography, enciphering, encoding,
2 or a computer contaminant to:

3 (A) Prevent, impede, delay, or disrupt access to any data,
4 information, image, program, signal, or sound;

5 (B) Cause or make any data, information, image, program, signal,
6 or sound unintelligible or unusable; or

7 (C) Prevent, impede, delay, or disrupt the normal operation or
8 use of any component, device, equipment, system, or network;

9 ~~(6)~~(7) "Information service" means a service that is designed or has
10 the capability to generate, process, store, retrieve, convey, emit, transmit,
11 receive, relay, record, or reproduce any data, information, image, program,
12 signal, or sound by means of any component, device, equipment, system, or
13 network, including, but not limited to, by means of:

14 (A) A computer, computer system, computer network, modem, or
15 scanner;

16 (B) A telephone, cellular phone, satellite phone, pager,
17 personal communications device, or facsimile machine;

18 (C) Any type of transmitter or receiver; or

19 (D) Any other component, device, equipment, system, or network
20 that uses analog, digital, electronic, electromagnetic, magnetic, or optical
21 technology;

22 ~~(7)~~~~(A)~~(8)(A) "Network" means a set of related, remotely connected
23 devices and facilities, including more than one (1) system, with the
24 capability to transmit data among any of the devices and facilities.

25 (B) "Network" includes, but is not limited to, a local,
26 regional, or global computer network;

27 (9) "Person" means any individual or business entity;

28 ~~(8)~~(10) "Program" means an ordered set of data representing coded
29 instructions or statements which can be executed by a computer and cause the
30 computer to perform one (1) or more tasks;

31 ~~(9)~~(11) "Property" means anything of value and includes a financial
32 instrument, information, electronically produced data, program, and any other
33 tangible or intangible item of value;

34 ~~(10)~~(12) "Provider" means any person who provides an information
35 service;

36 ~~(11)~~(13) "Provider of Internet service" means any provider who

1 provides subscribers with access to the Internet or an electronic mail
 2 address, or both; ~~and~~

3 (14) "Solicitor" means any person who is qualified to conduct business
 4 in Arkansas, and who, through an information system located in Arkansas,
 5 sends an electronic solicitation to a subscriber that the subscriber has
 6 neither authorized nor requested;

7 (15) "Subscriber" means any Arkansas resident who subscribes to an
 8 information system and has received at least one (1) electronic mail address
 9 and who, through the information service, receives an electronic mail
 10 solicitation; and

11 ~~(12)~~(16) "System" means a set of related equipment, whether or not
 12 connected, which is used with or for a computer.

13
 14 SECTION 2. Arkansas Code § 5-41-205 is amended to read as follows:
 15 5-41-205. Unlawful acts involving electronic mail.

16 (a)(1) This section shall apply to any solicitor who initiates or
 17 transmits an electronic mail solicitation to an Arkansas resident via an
 18 information system located in Arkansas.

19 ~~(a)~~(2) A person commits an unlawful act involving electronic mail if,
 20 with the purpose to devise or execute a scheme to defraud or illegally obtain
 21 property, the person:

22 ~~(1)~~(A) Knowingly and with the purpose to transmit or cause to be
 23 transmitted the item of electronic mail to the electronic mail address of one
 24 (1) or more recipients without their knowledge of or consent to the
 25 transmission falsifies or forges any data, information, image, program,
 26 signal, or sound that:

27 ~~(A)~~(i) Is contained in the header, subject line, or
 28 routing instructions of an item of electronic mail; or

29 ~~(B)~~(ii) Describes or identifies the sender, source,
 30 point of origin, or path of transmission of an item of electronic mail;

31 ~~(2)~~(B) Purposely transmits or causes to be transmitted an item
 32 of electronic mail to the electronic mail address of one (1) or more
 33 recipients without their knowledge of or consent to the transmission, if the
 34 person knows or has reason to know that the item of electronic mail contains
 35 or has been generated or formatted with:

36 ~~(A)~~(i) An Internet domain name that is being used

1 without the consent of the person who holds the Internet domain name; or

2 ~~(B)(ii)~~ Any data, information, image, program,
3 signal, or sound that has been used intentionally in the header, subject
4 line, or routing instructions of the item of electronic mail to falsify or
5 misrepresent:

6 ~~(i)(a)~~ The identity of the sender; or

7 ~~(ii)(b)~~ The source, point of origin, or path
8 of transmission of the item of electronic mail; or

9 ~~(3)(C)~~ Knowingly sells, gives, or otherwise distributes or
10 possesses with the intent to sell, give, or otherwise distribute any data,
11 information, image, program, signal, or sound which is designed or intended
12 to be used to falsify or forge any data, information, image, program, signal,
13 or sound that:

14 ~~(A)(i)~~ Is contained in the header, subject line, or
15 routing instructions of an item of electronic mail; or

16 ~~(B)(ii)~~ Describes or identifies the sender, source,
17 point of origin, or path of transmission of an item of electronic mail.

18 (b) ~~Subdivision~~ Subdivisions (a)(2)(B) and (c)-(e) of this section ~~does~~
19 do not apply to a provider of Internet service who, in the course of
20 providing service, transmits or causes to be transmitted an item of
21 electronic mail on behalf of another person, unless the provider of Internet
22 service is the person who first generates the item of electronic mail.

23 (c)(1) No person shall initiate or transmit an electronic mail
24 solicitation unless the electronic mail contains:

25 (A) A valid toll-free telephone number or valid return
26 electronic mail address that the subscriber may call or to which the
27 subscriber may reply to notify the solicitor not to send additional
28 electronic mail solicitations; and

29 (B) A statement informing the subscriber that he or she
30 may contact the toll-free telephone number or the return electronic mail
31 address and request the solicitor not to send additional electronic mail
32 solicitations.

33 (2)(A) The statement under subdivision (c)(1) of this section
34 shall be the first text in the body of the message and shall be of the same
35 size font as the majority of the text message.

36 (B) Upon receiving a subscriber's request not to receive

1 additional electronic mail solicitations, no person shall thereafter
 2 electronically mail or cause to be electronically mailed to the subscriber
 3 additional electronic mail solicitations.

4 (d) No person shall initiate or transmit an electronic mail
 5 solicitation unless the subject line of the electronic mail includes "ADV:"
 6 as the first four (4) characters.

7 (e) No person shall initiate or transmit an electronic mail
 8 solicitation containing material that may legally be viewed, purchased,
 9 rented, leased, or held in possession only by an individual eighteen (18)
 10 years of age or older, unless the subject line of the electronic mail
 11 includes "ADV:ADLT" as the first eight (8) characters.

12 (f) An unlawful act involving electronic mail is a Class D felony.
 13

14 SECTION 3. Arkansas Code Title 4, Chapter 99 is amended to add an
 15 additional subchapter to read as follows:

16 4-99-501. Short title.

17 This subchapter shall be known as the "Arkansas Electronic Mail Privacy
 18 Act".

19
 20 4-99-502. Definitions.

21 As used in this subchapter:

22 (1)(A) "Affiliate" means a person or persons wholly owned and operated
 23 by a parent entity who claims a prior or existing business relationship with
 24 another person; or

25 (B) A parent company whose wholly owned subsidiary claims a
 26 prior existing business relationship with a person;

27 (2)(A) "Charitable organization" means:

28 (i) Any person who is or holds himself out to be
 29 established for any benevolent, educational, philanthropic, humane,
 30 scientific, patriotic, social welfare or advocacy, public health,
 31 environmental conservation, civic, or other eleemosynary purpose or for the
 32 benefit of law enforcement personnel, firefighters, or other persons who
 33 protect the public safety; or

34 (ii) Any person who in any manner employs a charitable
 35 appeal as the basis of any solicitation or an appeal that has a tendency to
 36 suggest there is a charitable purpose to any solicitation.

1 (B) However, “charitable organization” does not include those
 2 charitable organizations that are not required to register with the Attorney
 3 General’s office under those statutes governing the solicitation of
 4 charitable contributions;

5 (3)(A) “Electronic mail solicitation” means:

6 (i) An electronic message initiated or transmitted for the
 7 purpose of encouraging the purchase or rental of or investment in property,
 8 goods, or services; or

9 (ii) An electronic message initiated or transmitted for
 10 the purpose of encouraging a charitable contribution by or on behalf of any
 11 charitable organization.

12 (B) However, “electronic mail solicitation” does not include:

13 (i) An electronic mail message to a person made with that
 14 person’s prior written express invitation or permission;

15 (ii) An electronic mail message to a person with whom the
 16 electronic mail solicitor has a prior or existing business relationship;

17 (iii) An electronic mail message made solely in connection
 18 with an existing debt or a contractual obligation, payment or performance of
 19 which has not been completed at the time the electronic mail message is
 20 initiated or transmitted;

21 (4) “Person” means any individual, group, unincorporated association,
 22 limited or general partnership, limited liability corporation, corporation,
 23 professional fund raiser, charitable organization, or other business entity;
 24 and

25 (5)(A) “Prior or existing business relationship” means a relationship
 26 in which at least one (1) financial transaction has transpired between the
 27 subscriber and the electronic mail solicitor or its affiliate within the
 28 thirty-six (36) months immediately preceding the electronic mail
 29 solicitation.

30 (B) “Prior or existing business relationship” does not include
 31 the situation in which a subscriber has merely been subject to an electronic
 32 mail solicitation by or at the behest of the electronic mail solicitor within
 33 the thirty-six (36) months immediately preceding the electronic mail
 34 solicitation.

35
 36 4-99-503. Statewide database.

1 No later than January 1, 2004, the Attorney General shall:

2 (1) Establish and thereafter operate a single statewide database
 3 composed of a list of electronic mail addresses of persons who object to
 4 receiving electronic mail solicitations;

5 (2)(A) Specify the methods by which objections to electronic mail
 6 solicitations shall be collected and added to the database.

7 (B)(i) Any person wishing to be placed in the database may
 8 notify the Attorney General and be placed in the database upon receipt by the
 9 Attorney General of an initial listing charge which shall not exceed ten
 10 dollars (\$10.00).

11 (ii) The listing shall be renewed by the Attorney General
 12 annually for each person upon the receipt of a renewal notice and an annual
 13 assessment not to exceed five dollars (\$5.00);

14 (3) Specify the methods by which objections may be withdrawn from the
 15 database;

16 (4) Specify the methods by which any person desiring to make or
 17 transmit electronic mail solicitations may obtain access to the database as
 18 required under this subchapter;

19 (5) Specify the methods for recovering the costs involved in
 20 identifying, collecting, updating, and disseminating the database;

21 (6) Specify:

22 (A) The frequency with which the database will be updated; and

23 (B)(i) The method by which the updating will take effect for the
 24 purposes of compliance with this subchapter.

25 (ii) Any person who is required by this subchapter to
 26 update his or her database shall be allowed no fewer than ten (10) calendar
 27 days from the date the Attorney General's database has been updated, to
 28 update his or her database; and

29 (7) Specify other activities related to the Attorney General's duties
 30 under this subchapter.

31
 32 4-99-504. Prohibitions.

33 It shall be a violation of this subchapter for any person to:

34 (1) Initiate or transmit an electronic mail solicitation to the
 35 electronic mail address of any person included in the then-current database
 36 maintained by the Attorney General under this subchapter; or

1 (2) Initiate or transmit an electronic mail solicitation without
2 having first accessed the electronic mail address in the manner specified by
3 the Attorney General from the then-current database maintained by the
4 Attorney General under this subchapter.

5
6 4-99-505. Applicability of subchapter.

7 This subchapter shall not apply to:

8 (1) Any electronic mail message transmitted or caused to be
9 transmitted by a provider of Internet service, unless the provider of
10 Internet service initiates the electronic mail message.

11 (2) Any person who is a licensee, as defined by § 17-42-103(10)(A),
12 who is a resident of the State of Arkansas and whose electronic mail
13 solicitation is for the sole purpose of selling, exchanging, purchasing,
14 renting, listing for sale or rent, or leasing real estate in accordance with
15 the provisions for which he or she was licensed and not in conjunction with
16 any other offer;

17 (3) Any motor vehicle dealer, as that term is defined in § 23-112-
18 103(19), who is a resident of the State of Arkansas, and who maintains a
19 current motor vehicle dealer's license issued by the Arkansas Motor Vehicle
20 Commission, whose electronic mail solicitation is for the sole purpose of
21 selling, offering to sell, soliciting, or advertising the sale of motor
22 vehicles in accordance with the provisions for which they were licensed and
23 not in conjunction with any other offer;

24 (4) Any agent, as that term is defined in § 23-64-102(2), who
25 maintains a current license as an insurance agent whose electronic mail
26 solicitation is for the purpose of soliciting, consulting, advising, or
27 adjusting in the business of insurance;

28 (5) Any broker-dealer, agent, or investment advisor registered by the
29 Securities Commissioner under §§ 23-42-301 through 23-42-308, who is
30 soliciting for the purpose of effecting or attempting to effect the purchase
31 or sale of securities or has the purpose of providing or seeking to provide
32 investment or financial advice;

33 (6) Any person sending an electronic mail solicitation on behalf of a
34 charitable organization as that term is defined in § 4-99-403(2), whose sole
35 purpose is soliciting for the charitable organization and who receives no
36 compensation as a result of his or her solicitation activities on behalf of

1 the charitable organization;

2 (7) Any person sending an electronic mail solicitation on behalf of a
3 newspaper of general circulation who is soliciting a subscription to the
4 newspaper from the other person, or who is soliciting advertising from the
5 other person;

6 (8)(A) An electronic mail solicitation made on behalf of any federally
7 chartered or state-chartered bank if the solicitation relates to banking
8 services other than credit card offers.

9 (B) No electronic mail solicitation made under subdivision (7)
10 of this section shall reference any form of credit card offer; and

11 (9) Electronic mail solicitations made on behalf of a funeral
12 establishment properly licensed under §§ 17-29-301 through 17-29-313, if the
13 solicitation relates to services provided by the funeral establishment in its
14 ordinary course of business.

15
16 4-99-506. Enforcement by the Attorney General.

17 (a) Any violation by any person of the prohibitions stated in § 4-99-
18 405 shall constitute an unfair or deceptive act or practice as defined by §
19 4-88-107.

20 (b) All authority granted to the Attorney General and all remedies
21 available to the Attorney General under §§ 4-88-101 through 4-88-115 shall be
22 granted to and available to the Attorney General for the enforcement of this
23 subchapter.

24
25 4-99-507. Moneys derived from listing charge.

26 All moneys derived from the listing charge described in § 4-99-506
27 shall be deposited into the State Treasury to the credit of the State Central
28 Services Fund as a direct revenue to be used exclusively to defray the cost
29 associated with the creation and maintenance of the database required by this
30 subchapter and the enforcement of this subchapter.

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