

SENATE BILL No. 565

July 13, 2011, Introduced by Senators ANDERSON, GREEN, KOWALL, HOPGOOD, BIEDA, WHITMER, GREGORY, JOHNSON, HOOD, NOFS, HUNTER and JANSEN and referred to the Committee on Energy and Technology.

A bill to amend 2003 PA 42, entitled
"Unsolicited commercial e-mail protection act,"
by amending the title and sections 1, 2, 7, and 8 (MCL 445.2501,
445.2502, 445.2507, and 445.2508) and by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to require certain notices regarding the transmission
of unsolicited commercial e-mail **AND TEXT MESSAGES**; to establish
procedures for e-mail service providers; to allow recipients of e-
mail **AND TEXT MESSAGES** to be excluded from receiving future
unsolicited commercial e-mail **AND TEXT MESSAGES**; and to prescribe
penalties and remedies.

Sec. 1. This act shall be known and may be cited as the
"unsolicited commercial e-mail **AND TEXT MESSAGE** protection act".

1 Sec. 2. As used in this act:

2 (a) "Commercial e-mail" means an electronic message, file,
3 data, or other information promoting the sale, lease, or exchange
4 of goods, services, real property, or any other thing of value that
5 is transmitted between 2 or more computers, computer networks, or
6 electronic terminals or within a computer network.

7 **(B) "COMMERCIAL TEXT MESSAGE" MEANS A TEXT MESSAGE PROMOTING**
8 **THE SALE, LEASE, OR EXCHANGE OF GOODS, SERVICES, REAL PROPERTY, OR**
9 **ANY OTHER THING OF VALUE.**

10 (C) ~~(b)~~—"Computer network" means 2 or more computers that are,
11 directly or indirectly, interconnected to exchange electronic
12 messages, files, data, or other information.

13 (D) ~~(c)~~—"E-mail address" means a destination, commonly
14 expressed as a string of characters, to which e-mail may be sent or
15 delivered.

16 (E) ~~(d)~~—"E-mail service provider" means a person that is an
17 intermediary in the transmission of e-mail or provides to end users
18 of e-mail service the ability to send and receive e-mail.

19 (F) ~~(e)~~—"Internet domain name" means a globally unique,
20 hierarchical reference to an internet host or service, assigned
21 through centralized internet authorities, comprising a series of
22 character strings separated by periods, with the right-most string
23 specifying the top of the hierarchy.

24 (G) ~~(f)~~—"Person" means an individual, corporation,
25 partnership, association, governmental entity, or any other legal
26 entity.

27 (H) ~~(g)~~—"Preexisting business relationship" means a

1 relationship existing before the receipt of an e-mail OR TEXT
2 MESSAGE formed voluntarily by the recipient with another person by
3 means of an inquiry, application, purchase, or use of a product or
4 service of the person sending the e-mail OR TEXT MESSAGE.

5 (I) "TEXT MESSAGE SERVICE PROVIDER" MEANS A PERSON THAT IS AN
6 INTERMEDIARY IN THE TRANSMISSION OF TEXT MESSAGES OR PROVIDES TO
7 END USERS OF TEXT MESSAGE SERVICE THE ABILITY TO SEND AND RECEIVE
8 TEXT MESSAGES.

9 (J) ~~(h)~~—"Unsolicited" means without the recipient's express
10 permission. An e-mail OR TEXT MESSAGE is not unsolicited if the
11 sender has a preexisting business or personal relationship with the
12 recipient. An e-mail OR TEXT MESSAGE is not unsolicited if it was
13 received as a result of the recipient opting into a system in order
14 to receive promotional material.

15 SEC. 6A. (1) A PERSON SHALL NOT SEND, OR CAUSE TO BE SENT, AN
16 UNSOLICITED COMMERCIAL TEXT MESSAGE TO A RESIDENT OF THIS STATE.

17 (2) SUBSECTION (1) DOES NOT APPLY TO EITHER OF THE FOLLOWING:

18 (A) A COMMERCIAL TEXT MESSAGE SENT BY A PERSON THAT HAS A
19 PREEXISTING BUSINESS RELATIONSHIP WITH THE RESIDENT IF THE RESIDENT
20 HAS AGREED TO RECEIVE COMMERCIAL TEXT MESSAGES FROM THAT PERSON.

21 (B) A COMMERCIAL TEXT MESSAGE SENT BY AN AFFILIATE OF A
22 BUSINESS THAT HAS A PREEXISTING BUSINESS RELATIONSHIP WITH THE
23 RESIDENT, IF THE RESIDENT HAS AGREED TO RECEIVE COMMERCIAL TEXT
24 MESSAGES FROM AFFILIATES OF THAT BUSINESS.

25 (3) A PERSON THAT INTENTIONALLY SENDS OR CAUSES TO BE SENT AN
26 UNSOLICITED COMMERCIAL TEXT MESSAGE TO AN INDIVIDUAL WHO THE PERSON
27 KNEW OR SHOULD HAVE KNOWN IS A RESIDENT OF THIS STATE SHALL

1 ESTABLISH A TOLL-FREE TELEPHONE NUMBER, A VALID SENDER-OPERATED
2 RETURN TEXT MESSAGE NUMBER, OR ANOTHER EASY-TO-USE ELECTRONIC
3 METHOD THAT THE RECIPIENT OF THE COMMERCIAL TEXT MESSAGE MAY CALL
4 OR TEXT TO NOTIFY THE SENDER NOT TO TRANSMIT ANY FURTHER
5 UNSOLICITED COMMERCIAL TEXT MESSAGES.

6 Sec. 7. (1) Except as otherwise provided under subsection (2),
7 a person who violates this act is guilty of a misdemeanor
8 punishable by imprisonment for not more than 1 year or a fine of
9 not more than \$10,000.00, or both.

10 (2) A person who violates section 4 or violates this act in
11 the furtherance of another crime is guilty of a felony punishable
12 by imprisonment for not more than 4 years or a fine of not more
13 than \$25,000.00, or both.

14 (3) Each commercial e-mail **OR TEXT MESSAGE** sent in violation
15 of this act is a separate violation under this section.

16 (4) An e-mail **OR TEXT MESSAGE** service provider does not
17 violate this act as a result of either of the following:

18 (a) Being an intermediary between the sender and recipient in
19 the transmission of an unsolicited commercial e-mail **OR TEXT**
20 **MESSAGE** that violates this act.

21 (b) ~~Provides transmission of~~ **TRANSMITTING** unsolicited
22 commercial e-mail **OR TEXT MESSAGES** over the provider's network or
23 facilities.

24 (5) It is prima facie evidence that the sender **OF AN E-MAIL** is
25 in violation of this section if the recipient is unable to contact
26 the sender through the return e-mail address provided by the sender
27 under section 3. **IT IS PRIMA FACIE EVIDENCE THAT THE SENDER OF A**

1 **TEXT MESSAGE IS IN VIOLATION OF THIS SECTION IF THE RECIPIENT IS**
2 **UNABLE TO CONTACT THE SENDER THROUGH THE RETURN NUMBER PROVIDED BY**
3 **THE SENDER UNDER SECTION 6A.**

4 (6) It is a defense to a case brought under this section or an
5 action under section 8 that the unsolicited commercial e-mail was
6 transmitted accidentally or as a result of a preexisting business
7 relationship **OR THAT THE INDIVIDUAL AGREED TO RECEIVE THE**
8 **UNSOLICITED COMMERCIAL TEXT MESSAGE AS PROVIDED IN SECTION 6A(2).**
9 The burden of proving that the commercial e-mail was transmitted
10 accidentally or as a result of a preexisting business relationship
11 **OR THAT THE INDIVIDUAL AGREED TO RECEIVE THE UNSOLICITED COMMERCIAL**
12 **TEXT MESSAGE AS PROVIDED IN SECTION 6A(2)** is on the sender.

13 Sec. 8. (1) A civil action may be brought by a person who
14 received an unsolicited commercial e-mail **OR TEXT MESSAGE** in
15 violation of this act.

16 (2) A civil action may be brought by an e-mail **OR TEXT MESSAGE**
17 service provider through whose facilities the unsolicited
18 commercial e-mail **OR TEXT MESSAGE** was transmitted in violation of
19 this act.

20 (3) A civil action may be brought by the attorney general
21 against a person who has violated this act.

22 (4) In each action brought under this section, a recipient, **AN**
23 e-mail **OR TEXT MESSAGE** service provider, or **THE** attorney general
24 may recover 1 of the following:

25 (a) Actual damages.

26 (b) In lieu of actual damages, ~~recover~~ the lesser of the
27 following:

1 (i) \$500.00 per unsolicited commercial e-mail **OR TEXT MESSAGE**
2 received by the recipient or transmitted through the e-mail **OR TEXT**
3 **MESSAGE** service provider.

4 (ii) \$250,000.00 for each day that the violation occurs.

5 (5) ~~The~~**A** prevailing recipient or e-mail **OR TEXT MESSAGE**
6 service provider shall be awarded actual costs and reasonable
7 attorney fees.