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AN ACT

1 Regulating electronic mail solicitations; protecting privacy of
2 Internet consumers; regulating use of data about Internet
3 users; and prescribing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Internet
10 Privacy Act.

11 Section 102. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Consumer." A person who agrees to pay a fee to an Internet
16 service provider for access to the Internet for personal, family
17 or household purposes and who does not resell access.

18 "Internet service provider." A business or person who

1 provides consumers authenticated access to, or presence on, the
2 Internet by means of a switched or dedicated telecommunications
3 channel upon which the business or person provides transit
4 routing of Internet Protocol (IP) packets for and on behalf of
5 consumers. The term does not include the offering, on a common
6 carrier basis, of telecommunications facilities or of
7 telecommunications by means of those facilities.

8 "Ordinary course of business." Debt collection activities,
9 order fulfillment, request processing or the transfer of
10 ownership.

11 "Personally identifiable information." Information that
12 identifies:

13 (1) a consumer by physical or electronic address or
14 telephone number;

15 (2) a consumer as having requested or obtained specific
16 materials or services from an Internet service provider;

17 (3) Internet or online sites visited by a consumer; or

18 (4) the contents of a consumer's data storage devices.

19 CHAPTER 3

20 DISCLOSURE OF PERSONAL INFORMATION

21 Section 301. When disclosure of personal information
22 prohibited.

23 Except as provided in sections 302 and 303, no Internet
24 service provider may knowingly disclose personally identifiable
25 information concerning a consumer of the Internet service
26 provider.

27 Section 302. When disclosure of personal information required.

28 An Internet service provider shall disclose personally
29 identifiable information concerning a consumer:

30 (1) to an investigative or law enforcement officer while

1 acting as authorized by law;

2 (2) pursuant to a court order in a civil proceeding upon
3 a showing of compelling need for the information that cannot
4 be accommodated by other means;

5 (3) to a court in a civil action commenced by the
6 Internet service provider to enforce collection of unpaid
7 subscription fees or purchase amounts, and then only to the
8 extent necessary to establish the fact of the subscription
9 delinquency or purchase agreement, and with appropriate
10 safeguards against unauthorized disclosure;

11 (4) to the consumer who is the subject of the
12 information, upon written or electronic request and upon
13 payment of a fee not to exceed the actual cost of retrieving
14 the information; or

15 (5) pursuant to subpoena, including an administrative
16 subpoena, issued under authority of a law of this State or
17 another state or the United States.

18 Section 303. When disclosure of personal information permitted.

19 (a) Conditions of disclosure.--An Internet service provider
20 may disclose personally identifiable information concerning a
21 consumer to:

22 (1) a person if the disclosure is incident to the
23 ordinary course of business of the Internet service provider;

24 (2) another Internet service provider for purposes of
25 reporting or preventing violations of the published
26 acceptable use policy or consumer service agreement of the
27 Internet service provider, except that the recipient may
28 further disclose the personally identifiable information only
29 as provided by this act; or

30 (3) a person with the authorization of the consumer.

1 (b) Authorization.--

2 (1) An Internet service provider may obtain a consumer's
3 authorization of the disclosure of personally identifiable
4 information in writing or by electronic means. The request
5 for authorization must reasonably describe the type of person
6 to whom personally identifiable information may be disclosed
7 and the anticipated uses of the information.

8 (2) In order for an authorization to be effective, a
9 contract between an Internet service provider and the
10 consumer must state either that the authorization will be
11 obtained by an affirmative act of the consumer or that
12 failure of the consumer to object after the request has been
13 made constitutes authorization of disclosure. The provision
14 in the contract must be conspicuous.

15 (3) Authorization may be obtained in a manner consistent
16 with self-regulating guidelines issued by representatives of
17 the Internet service provider or online industry or in any
18 other manner reasonably designed to comply with this act.

19 Section 304. Security of information.

20 An Internet service provider shall take reasonable steps to
21 maintain security and privacy of a consumer's personally
22 identifiable information.

23 Section 305. Exclusion from evidence.

24 Except for purposes of establishing a violation of this act,
25 personally identifiable information obtained in a manner other
26 than as provided in this act may not be admitted as evidence in
27 a civil action.

28 Section 306. Enforcement.

29 (a) General rule.--A consumer who prevails or substantially
30 prevails in an action brought under this act shall be entitled

1 to recover to the greater of \$500 or actual damages. Costs,
2 disbursements and reasonable attorney fees may be awarded to a
3 party awarded damages for a violation of this act.

4 (b) Defense.--In an action under this act, it is a defense
5 that the defendant has established and implemented reasonable
6 practices and procedures to prevent violations of this act.

7 Section 307. Construction.

8 Nothing in this chapter shall be construed to limit any
9 greater protection of the privacy of information under other
10 law, except that:

11 (1) nothing in this act shall limit the authority under
12 other Federal or State law of law enforcement or prosecuting
13 authorities to obtain information; and

14 (2) if Federal law is enacted that regulates the release
15 of personally identifiable information by Internet service
16 providers, but does not preempt State law on the subject, the
17 Federal law supersedes any conflicting provisions of this
18 act.

19 CHAPTER 5

20 RECORDS

21 Section 501. Records concerning electronic communication
22 service or remote computing service.

23 (a) General rule.--Except as provided in subsection (b), a
24 provider of electronic communication service or remote computing
25 service may disclose a record or other information pertaining to
26 a subscriber to or customer of the service to any person other
27 than a governmental entity.

28 (b) Exception.--A provider of electronic communication
29 service or remote computing service may disclose a record or
30 other information pertaining to a subscriber to or customer of

1 the service to a governmental entity only when the governmental
2 entity:

3 (1) uses an administrative subpoena authorized by
4 statute;

5 (2) obtains a warrant;

6 (3) obtains a court order for the disclosure under this
7 act; or

8 (4) has the consent of the subscriber or customer to the
9 disclosure.

10 (c) Governmental entities.--A governmental entity receiving
11 records or information under this section need not provide
12 notice to a subscriber or customer.

13 CHAPTER 7

14 COMMERCIAL ELECTRONIC MAIL SOLICITATION

15 Section 701. Definitions.

16 The following words and phrases when used in this chapter
17 shall have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Commercial electronic mail message." An electronic mail
20 message sent through an Internet service provider's facilities
21 located in this Commonwealth to a resident of this Commonwealth
22 for promoting real property, goods or services for sale or
23 lease.

24 "Electronic mail address." A destination, commonly expressed
25 as a string of characters, to which electronic mail may be sent
26 or delivered.

27 "Electronic mail service provider." A business, nonprofit
28 organization, educational institution, library or governmental
29 entity that provides a set of users the ability to send or
30 receive electronic mail messages through the Internet.

1 "Initiate the transmission." In relation to the action by
2 the original sender of an electronic mail message, not to the
3 action by an intervening Internet service provider or electronic
4 mail service provider that may handle or retransmit the message.

5 "Internet domain name." A globally unique, hierarchical
6 reference to an Internet host or service, assigned through
7 centralized Internet naming authorities, comprising a series of
8 character strings separated by periods with the rightmost string
9 specifying the top of the hierarchy.

10 Section 702. False or misleading messages prohibited.

11 No person may initiate the transmission of a commercial
12 electronic mail message that:

13 (1) uses a third party's Internet domain name without
14 permission of the third party or otherwise misrepresents
15 information in identifying the point of origin or the
16 transmission path of a commercial electronic mail message; or

17 (2) contains false or misleading information in the
18 subject line.

19 Section 703. Subject disclosure.

20 (a) General rule.--The subject line of a commercial
21 electronic mail message shall include "ADV" as the first
22 characters. If the message contains information that consists of
23 material of a sexual nature that may only be viewed by an
24 individual 18 years of age and older, the subject line of the
25 message must include "ADV-ADULT" as the first characters.

26 (b) Definitions.--As used in this section, the following
27 words and phrases shall have the meanings given to them in this
28 subsection unless the context clearly indicates otherwise:

29 "Affiliate." A person that directly or indirectly controls,
30 is controlled by or is under common control with a specified

1 person.

2 "Business relationship." A prior or existing relationship
3 formed between the initiator and the recipient of a commercial
4 electronic mail message with or without an exchange of
5 consideration, on the basis of an inquiry, application, purchase
6 or use by the recipient of or regarding products, information or
7 services offered by the initiator or an affiliate or agent of
8 the initiator.

9 "Commercial electronic mail message." Does not include a
10 message:

11 (1) if the recipient of the message has consented to
12 receive or has solicited electronic mail messages from the
13 initiator of the message;

14 (2) from an organization using electronic mail to
15 communicate exclusively with its members;

16 (3) from an entity that uses electronic mail to
17 communicate exclusively with its employees or contractors; or

18 (4) if there is a business or personal relationship
19 between the initiator and the recipient.

20 Section 704. Toll-free number.

21 (a) Duty of sender to establish.--

22 (1) A sender initiating the transmission of a commercial
23 electronic mail message shall establish a toll-free telephone
24 number, a valid sender-operated return electronic mail
25 address or another easy-to-use electronic method that the
26 recipient of the commercial electronic mail message may call
27 or access by electronic mail or other electronic means to
28 notify the sender not to transmit by electronic mail any
29 further unsolicited commercial electronic mail messages.

30 (2) The notification process may include the ability for

1 the commercial electronic mail message recipient to direct
2 the initiator to transmit or not to transmit particular
3 commercial electronic mail messages based upon products,
4 services, divisions, organizations, companies or other
5 selections of the recipient's choice.

6 (b) Statement required.--A commercial electronic mail
7 message shall include a statement informing the recipient of a
8 toll-free telephone number that the recipient may call or a
9 valid return address to which the recipient may write or access
10 by electronic mail or another electronic method established by
11 the initiator:

12 (1) notifying the sender not to transmit to the
13 recipient any further unsolicited commercial electronic mail
14 messages to the electronic mail address or addresses
15 specified by the recipient; and

16 (2) explaining the manner in which the recipient may
17 specify what commercial electronic mail messages the
18 recipient does and does not wish to receive.

19 Section 705. Blocking receipt or transmission.

20 No electronic mail service provider may be held liable in an
21 action by a recipient for an act voluntarily taken in good faith
22 to block the receipt or transmission through its service of a
23 commercial electronic mail message that the electronic mail
24 service provider reasonably believes is, or will be, sent in
25 violation of this chapter.

26 Section 706. Defenses.

27 A person is not liable for a commercial electronic mail
28 message sent in violation of this chapter if the person can show
29 by a preponderance of evidence that:

30 (1) the commercial electronic mail message was not

1 initiated by the person or was initiated in a manner and form
2 not subject to the control of the person; or

3 (2) the person has established and implemented
4 reasonable practices and procedures to prevent a violation of
5 this chapter.

6 Section 707. Damages.

7 (a) General rule.--A person injured by a violation of this
8 chapter may recover damages caused by the violation as specified
9 in this section.

10 (b) Recovery permitted.--An injured person, other than an
11 electronic mail service provider, may recover:

12 (1) the lesser of \$25 for each commercial electronic
13 mail message received that violates section 702 or \$35,000
14 per day; or

15 (2) the lesser of \$10 for each commercial electronic
16 mail message received that violates section 703 or \$25,000
17 per day.

18 (c) Election or recovery.--An injured electronic mail
19 service provider may recover actual damages or elect, in lieu of
20 actual damages, to recover:

21 (1) the lesser of \$25 for each commercial electronic
22 mail message received that violates section 702 or \$35,000
23 per day; or

24 (2) the lesser of \$10 for each commercial electronic
25 mail message received that violates section 703 or \$25,000
26 per day.

27 (d) Discretion of court.--At the request of any party to an
28 action brought under this section, the court may, at its
29 discretion, conduct all legal proceedings in such a way as to
30 protect the secrecy and security of the computer, computer

1 network, computer data, computer program and computer software
2 involved in order to prevent possible recurrence of the same or
3 similar act by another person and to protect trade secrets of a
4 party.

5 (e) Costs and fees.--Costs and reasonable attorney fees may
6 be awarded to a party awarded damages for a violation of this
7 chapter.

8 CHAPTER 9

9 MISCELLANEOUS PROVISIONS

10 Section 901. (Reserved).

11 Section 902. Effective date.

12 This act shall take effect in 60 days.