

## OAG SPAM LEGISLATION

The Commonwealth of Massachusetts

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In the Year Two Thousand and Two  
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### AN ACT REGARDING COMMERCIAL ELECTRONIC MAIL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws, as appearing in the 2002 Official Edition, are hereby amended by adding the following new chapter:-

#### **Section 1: Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Current or prior business relationship" means:

(a) The recipient has provided express consent to receive commercial electronic mail messages from that sender; or

(b) The recipient has purchased or leased real property, goods, or services from the sender of the unsolicited commercial electronic mail message, the message from the sender directly concerns the purchase or lease, and the message is sent within the warranty period or within thirteen months after the date of purchase or lease, whichever period is a greater length of time; or

(c) The recipient has an ongoing contract with the sender of the unsolicited commercial electronic mail message, and the message from the sender directly concerns the ongoing contract.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail messages may be sent or delivered.

(3) "Electronic mail message" means an electronic message or computer file containing an image of a message that is transmitted between two or more computers or electronic terminals.

(4) "Electronic mail service provider" means any business or organization qualified to do business in Massachusetts that provides registered users the ability to send or receive electronic mail through equipment located in this state, and that is an intermediary in sending or receiving electronic mail.

(5) "Transmit" refers to the initial transmission by the original sender of an electronic mail message. It does not refer to the action by any intervening electronic mail service provider that may facilitate the transmission of the message.

(6) "Recipient" means a person who receives any unsolicited commercial electronic mail message.

(7) "Person" means a natural person, corporation, trust, partnership (incorporated or unincorporated), association, or any other business or legal entity.

(8) "Unsolicited commercial electronic mail message" means an electronic mail message sent for the purpose of promoting the lease, sale, rental, gift, offer or other disposition of any real property, goods, services, or extension of credit to a recipient with whom the sender does not have a current or prior business relationship. It does not mean an electronic mail message to which an electronic mail service provider has attached an advertisement in exchange for free use of an electronic mail account.

## **Section 2: Restrictions on certain commercial electronic mail.**

(1) It shall be a violation of this section for any person who transmits any unsolicited commercial electronic mail message to fail to provide a valid sender-operated return electronic mail address, clearly and conspicuously disclosed in the unsolicited commercial electronic mail message, which the recipient may use to contact the sender to request that the sender not initiate or assist the transmission of any further unsolicited electronic mail messages to the recipient. Any person covered by this section must include in any unsolicited commercial electronic mail message a clear and conspicuous notice to the recipient that the recipient can utilize the required contact information to request not to receive any further unsolicited messages from the sender. It shall be a violation of this section for a person to transmit any unsolicited commercial electronic mail message to any recipient that has requested under this subsection not to receive any further unsolicited electronic mail messages from the sender.

(2) It shall be a violation of this section for any person that transmits an unsolicited commercial electronic mail message to

(a) fail to disclose the actual point-of-origin electronic mail address of the unsolicited commercial electronic message.

(b) falsify electronic mail transmission information or other routing information for the unsolicited commercial electronic mail message.

(c) use a third party's internet address or domain name without the third party's consent for the purposes of transmitting electronic mail.

(d) include any false or misleading information in the subject line or text of such a message.

(e) fail to use the exact characters "ADV:" (the capital letters "A", "D", and "V", in that order, followed immediately by a colon) as the first four characters in the subject line of an unsolicited commercial electronic mail message unless the sender:

(i) Is an organization using electronic mail to communicate exclusively with its members; or

(ii) Is an organization using electronic mail to communicate exclusively with its employees or contractors, or both; or

(iii) Has a current or prior business relationship with the recipient.

(3) It shall also be a violation of this section for a person that transmits an unsolicited commercial electronic mail message that advertises the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen years of age or older under Massachusetts law, including but not limited to content of a sexual, sexually explicit or otherwise adult-oriented nature, to fail to use the exact characters "ADV:ADLT" (the capital letters "A", "D", and "V", in that order, followed immediately by a colon, followed immediately by the capital letters "A", "D", "L", and "T", in that order) as the first eight characters in the subject line of the unsolicited commercial electronic mail message.

(4) It shall be a violation of this section for any person to sell, give, or otherwise distribute or possess with the intent to sell, give or distribute software which:

(a) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information; or

(b) Is marketed by that person or another acting in concert with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

### **Section 3: Enforcement; civil right of action for damages.**

(1) In addition to the remedies provided below, violations of Section 2 of this Act shall constitute unfair or deceptive acts or practices under G.L. c. 93A, § 2 (a).

(2) Damages to the recipient of a commercial electronic mail message sent in violation of Section 2 of this Act or to an electronic mail service provider resulting from a violation of Section 2 of this Act are five hundred dollars per message, or actual damages, whichever is greater, in addition to reasonable attorney's fees and costs.

(3) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowable by law.

### **Section 4: Scope of Section.**

(1) This chapter applies when an unsolicited commercial electronic mail message is transmitted from a computer located in Massachusetts, or via an electronic mail service provider's service or equipment located in Massachusetts, or when the sender knows or should know that the recipient of an unsolicited commercial electronic mail message is a Massachusetts resident. For purposes of this section, "knows or should know" means that the sender possesses information indicating that a recipient is a Massachusetts resident or where that information is reasonably obtainable.

(2) Nothing in this chapter shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function. No electronic mail service provider may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this chapter.

**Section 5: Effective Date.**

This chapter shall take effect 180 days from the day it is enacted.