

# OHIO

Section 2307.64 of the *Ohio Revised Code Annotated* governs the transmission of unsolicited electronic mail. That code section:

- Requires the sender of an unsolicited email to provide his or her name, street address, and email address;
- Forbids a sender to falsify his or her identity, or to falsify the routing information of an email, and classifies a violation as a crime of forgery;
- Requires a sender to provide a mechanism by which a recipient can ask not to be contacted;
- Forbids sending email to persons who have asked not to receive it;
- Generally requires a sender to comply with a service provider's conditions of use; and
- Entitles a recipient or a service provider to sue for damages, attorney's fees and costs, and an injunction against further violations.

In addition, Section 2313.421 governs the transmission of multiple unsolicited commercial emails. "Multiple" is defined as 10 emails per day, 100 per month, or 1,000 per year. That code section, which is modeled after the federal CAN-SPAM Act of 2003:

- Outlaws the sending of email with the intent to deceive the recipient regarding its origin, or with falsified header information;
- Forbids a person to register under a false identity for five or more email accounts or two or more Internet domain names and to use any of them to send email;
- Makes it illegal to falsely claim ownership of five or more Internet protocol addresses and to send email from any of them;
- Provides that acting as a ringleader of three or more violators is an offense;
- Outlaws the "harvesting" of email addresses from a website in violation of the site owner's policies, or using "dictionary attacks" or similar means of automatically generating email addresses;
- Forbids a person to access, without authority, a computer belonging to another person for the purpose of sending email;
- Imposes criminal penalties on violators;
- Authorizes the Attorney General and Internet service providers to sue violators for damages and an injunction against further violations; and
- Provides for the imposition of court-imposed civil penalties on violators.

## **Ohio Rev. Code Ann.**

### **§2307.64. Restrictions on Commercial Electronic Mail**

(A) As used in this section:

(A)(1) "Advertisement" has the same meaning as in §4931.75.

(A)(2) "Computer," "computer network," "computer program," "computer services," and "telecommunications device" have the same meanings as in §2913.01.

(A)(3) "Electronic mail" means an electronic message that is transmitted between two or more telecommunications devices or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, and whether or not the message is viewed upon the transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(A)(4) "Electronic mail advertisement" means electronic mail containing an advertisement.

(A)(5) "Electronic mail service provider" means any person that is an intermediary in sending and receiving electronic mail and that provides to users of electronic mail services the ability to send or receive electronic mail. "Electronic mail service provider" includes an internet service provider.

(A)(6) "Originating address" means the string of characters used to specify the source of any electronic mail message.

(A)(7) "Person" has the same meaning as in §1.59, but when a person is not an individual, the person responsible for transmitting or causing to be transmitted an electronic mail advertisement is the particular division of the partnership, corporation, or other business entity actually responsible for the transmission of the electronic mail advertisement.

(A)(8) "Pre-existing business relationship" means that there was a business transaction between the initiator and the recipient of a commercial electronic mail message during the five-year period preceding the receipt of that message. A pre-existing business relationship includes a transaction involving the free provision of information, goods, or services requested by the recipient. A pre-existing business relationship does not exist after a recipient requests to be removed from the distribution lists of an initiator pursuant to division (B) and a reasonable amount of time has expired since that request.

(A)(9) "Receiving address" means the string of characters used to specify a recipient with each receiving address creating a unique and separate recipient.

(A)(10) "Recipient" means a person who receives an electronic mail advertisement at any one of the following receiving addresses:

(A)(10)(a) A receiving address furnished by an electronic mail service provider that bills for furnishing and maintaining that receiving address to a mailing address within this state;

(A)(10)(b) A receiving address ordinarily accessed from a computer located within this state;

(A)(10)(c) A receiving address ordinarily accessed by a person domiciled within this state;

(A)(10)(d) Any other receiving address with respect to which the obligations imposed by this section can be imposed consistent with the United States Constitution.

(B)(1) Except as otherwise provided in division (B)(3), a person that transmits or causes to be transmitted to a recipient an electronic mail advertisement shall clearly and conspicuously provide to the recipient, within the body of the electronic mail advertisement, both of the following:

(B)(1)(a) The person's name and complete residence or business address and the electronic mail address of the person transmitting the electronic mail advertisement;

(B)(1)(b) A notice that the recipient may decline to receive from the person transmitting or causing to be transmitted the electronic mail advertisement any additional electronic mail advertisements and a detailed procedure for declining to receive any additional electronic mail advertisements at no cost. The notice shall be of the same size of type as the majority of the text of the message and shall not require that the recipient provide any information other than the receiving address.

(B)(2) If the recipient of an electronic mail advertisement uses the procedure contained in the notice described in division (B)(1)(b) to decline to receive any additional electronic mail advertisements, the person that transmitted or caused to be transmitted the original electronic mail advertisement, within a reasonable period of time, shall cease transmitting or causing to be transmitted to the receiving address any additional electronic mail advertisements.

(B)(3) A person does not violate division (B) if the person transmits or causes to be transmitted to the recipient an electronic mail advertisement when any of the following apply:

(B)(3)(a) The person has a pre-existing business or personal relationship with the recipient.

(B)(3)(b) The recipient has consented or has agreed as a condition of service to receive the electronic mail advertisement.

(B)(3)(c) The recipient receives the electronic mail advertisement because another recipient forwarded the advertisement to that recipient via an internet web site or another recipient made a direct referral of that recipient to receive the advertisement.

(C) No person shall use a computer, a computer network, or the computer services of an electronic mail service provider to transmit an electronic mail advertisement in contravention of the authority granted by, or in violation of the policies related to electronic mail advertisements set by, the electronic mail service provider if the electronic mail service provider has provided the person notice of those policies. For the purposes of this division, notice of those policies shall be deemed sufficient if an electronic mail service provider maintains an easily accessible web page containing its policies regarding electronic mail advertisements and can demonstrate that notice was supplied via electronic means between the sending and receiving computers.

(D) No electronic mail service provider shall be liable for transmitting another person's electronic mail advertisement through its service in violation of this section, or shall be liable for any action it voluntarily takes in good faith to block the receipt or transmission through its service of any electronic mail advertisement that it believes is, or will be sent, in violation of this section.

(E) A recipient of an electronic mail advertisement transmitted in violation of division (B) may bring a civil action against a person who transmitted that advertisement or caused it to be transmitted. In that action, the recipient may recover the following:

(E)(1) \$100 for each violation, not to exceed a total of \$50,000;

(E)(2) Reasonable attorney's fees, court costs, and other costs of bringing the action.

(F) An electronic mail service provider whose authority or policy has been contravened in violation of division (C) may bring a civil action against a person who transmitted that advertisement or caused it to be transmitted. In that action, the electronic mail service provider may recover the following:

(F)(1)(a) \$50 for each violation of division (C), not to exceed \$50,000;

(F)(1)(b) If a violation of division (C) is a willful or knowing violation, the court may increase the amount recoverable to an amount not to exceed \$500,000.

(F)(1)(c) If a violation of division (C) is accompanied by a violation of division (H), there shall be no limit on the amount that may be recovered pursuant to this section.

(F)(2) Reasonable attorney's fees, court costs, and other costs of bringing the action.

(G) In addition to any recovery that is allowed under divisions (E) or (F), the recipient of an electronic mail advertisement transmitted in violation of division (B) or the electronic mail service provider of an advertisement transmitted in violation of division (C) may apply to the court of common pleas of the county in which the recipient resides or the service provider is located for an order enjoining the person who transmitted or caused to be transmitted that

electronic mail advertisement from transmitting or causing to be transmitted to the recipient any additional electronic mail advertisement.

(H) No person shall use a computer, a computer network, a computer program, or the computer services of an electronic mail service provider with the intent to forge an originating address or other routing information, in any manner, in connection with the transmission of an electronic mail advertisement through or into the network of an electronic mail service provider or its subscribers. Each use of a computer, a computer network, a computer program, or the computer services of an electronic mail service provider in violation of this division constitutes a separate offense. A person who violates this division is guilty of forgery under §2913.31.

*Created by Senate Bill 8, §1, Laws of 2002, effective November 1, 2002. Amended by House Bill 204, §1, Laws of 2004, effective November 5, 2004; and House Bill 361, §1, Laws of 2004, effective May 6, 2005.*

### **§2913.421. Transmission of Multiple Commercial Electronic Mail**

(A) As used in this section:

(A)(1) "Computer," "computer network," and "computer system" have the same meanings as in §2913.01.

(A)(2) "Commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, including content on an internet web site operated for a commercial purpose, but does not include a transactional or relationship message. The inclusion of a reference to a commercial entity or a link to the web site of a commercial entity does not, by itself, cause that message to be treated as a commercial electronic mail message for the purpose of this section, if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(A)(3) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the internet.

(A)(4) "Electronic mail," "originating address," and "receiving address" have the same meanings as in §2307.64.

(A)(5) "Electronic mail message" means each electronic mail addressed to a discrete addressee.

(A)(6) "Electronic mail service provider" means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail and that provides to the public electronic mail accounts or online user accounts from which electronic mail may be sent.

(A)(7) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name, the originating address, and technical information that authenticates the sender of an electronic mail message for computer network security or computer network management purposes.

(A)(8) "Initiate the transmission" or "initiated" means to originate or transmit a commercial electronic mail message or to procure the origination or transmission of that message, regardless of whether the message reaches its intended recipients, but does not include actions that constitute routine conveyance of such message.

(A)(9) "Internet" has the same meaning as in §341.42.

(A)(10) "Internet protocol address" means the string of numbers by which locations on the internet are identified by routers or other computers connected to the internet.

(A)(11) "Materially falsify" means to alter or conceal in a manner that would impair the ability of a recipient of an electronic mail message, an electronic mail service provider processing an electronic mail message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to the person that initiated the electronic mail message or to investigate an alleged violation of this section.

(A)(12) "Multiple" means more than 10 commercial electronic mail messages during a 24-hour period, more than 100 commercial electronic mail messages during a 30-day period, or more than 1,000 commercial electronic mail messages during a one-year period.

(A)(13) "Recipient" means a person who receives a commercial electronic mail message at any one of the following receiving addresses:

(A)(13)(a) A receiving address furnished by an electronic mail service provider that bills for furnishing and maintaining that receiving address to a mailing address within this state;

(A)(13)(b) A receiving address ordinarily accessed from a computer located within this state or by a person domiciled within this state;

(A)(13)(c) Any other receiving address with respect to which this section can be imposed consistent with the United States Constitution.

(A)(14) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automated technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(A)(15) "Transactional or relationship message" means an electronic mail message the primary purpose of which is to do any of the following:

(A)(15)(a) Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(A)(15)(b) Provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(A)(15)(c) Provide notification concerning a change in the terms or features of; a change in the recipient's standing or status with respect to; or, at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(A)(15)(d) Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled;

(A)(15)(e) Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall do any of the following:

(B)(1) Knowingly use a computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients or any electronic mail service provider, as to the origin of those messages;

(B)(2) Knowingly and materially falsify header information in multiple commercial electronic mail messages and purposely initiate the transmission of those messages;

(B)(3) Knowingly register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or

two or more domain names and purposely initiate the transmission of multiple commercial electronic mail messages from one, or any combination, of those accounts or domain names;

(B)(4) Knowingly falsely represent the right to use five or more internet protocol addresses, and purposely initiate the transmission of multiple commercial electronic mail messages from those addresses.

(C)(1) Whoever violates division (B) is guilty of illegally transmitting multiple commercial electronic mail messages. Except as otherwise provided in division (C)(2) or (E), illegally transmitting multiple commercial electronic mail messages is a felony of the fifth degree.

(C)(2) Illegally transmitting multiple commercial electronic mail messages is a felony of the fourth degree if any of the following apply:

(C)(2)(a) Regarding a violation of division (B)(3), the offender, using information that materially falsifies the identity of the actual registrant, knowingly registers for 20 or more electronic mail accounts or online user accounts or 10 or more domain names, and purposely initiates, or conspires to initiate, the transmission of multiple commercial electronic mail messages from the accounts or domain names.

(C)(2)(b) Regarding any violation of division (B), the volume of commercial electronic mail messages the offender transmitted in committing the violation exceeds 250 during any 24-hour period, 2,500 during any 30-day period, or 25,000 during any one-year period.

(C)(2)(c) Regarding any violation of division (B), during any one-year period the aggregate loss to the victim or victims of the violation is \$500 or more, or during any one-year period the aggregate value of the property or services obtained by any offender as a result of the violation is \$500 or more.

(C)(2)(d) Regarding any violation of division (B), the offender committed the violation with three or more other persons with respect to whom the offender was the organizer or leader of the activity that resulted in the violation.

(C)(2)(e) Regarding any violation of division (B), the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses to which the commercial electronic mail message was transmitted, if that offender knew that the electronic mail addresses of the recipients were obtained using an automated means from an internet web site or proprietary online service operated by another person, and that web site or online service included, at the time the electronic mail addresses were obtained, a notice stating that the operator of that web site or online service will not transfer addresses maintained by that web site or online service to any other party for the purposes of initiating the transmission of, or enabling others to initiate the transmission of, electronic mail messages.

(C)(2)(f) Regarding any violation of division (B), the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses of the recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(D)(1) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall knowingly access a computer without authorization and purposely initiate the transmission of multiple commercial electronic mail messages from or through the computer.

(D)(2) Except as otherwise provided in division (E), whoever violates division (D)(1) is guilty of unauthorized access of a computer, a felony of the fourth degree.

(E) Illegally transmitting multiple commercial electronic mail messages and unauthorized access of a computer in violation of this section are felonies of the third degree if the offender previously has been convicted of a violation of this section, or a violation of a law of another state or the United States regarding the transmission of electronic mail messages or unauthorized access to a computer, or if the offender committed the violation of this section in the furtherance of a felony.

(F)(1) The attorney general or an electronic mail service provider that is injured by a violation of this section may bring a civil action in an appropriate court of common pleas of this state seeking relief from any person whose conduct violated this section. The civil action may be commenced at any time within one year of the date after the act that is the basis of the civil action.

(F)(2) In a civil action brought by the attorney general pursuant to division (F)(1) for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief. The court also may impose a civil penalty against the offender, as the court considers just, in an amount that is the lesser of: (a) \$25,000 for each day a violation occurs, or (b) not less than \$2 but not more than \$8 for each commercial electronic mail message initiated in violation of this section.

(F)(3) In a civil action brought by an electronic mail service provider pursuant to division (F)(1) for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief, and also may award damages in an amount equal to the greater of the following:

(F)(3)(a) The sum of the actual damages incurred by the electronic mail service provider as a result of a violation of this section, plus any receipts of the offender that are attributable to a violation of this section and that were not taken into account in computing actual damages;

(F)(3)(b) Statutory damages, as the court considers just, in an amount that is the lesser of: (i) \$25,000 for each day a violation occurs, or (ii) not less than \$2 but not more than \$8 for each commercial electronic mail message initiated in violation of this section.

(F)(4) In assessing damages awarded under division (F)(3), the court may consider whether the offender has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent the violation, or the violation occurred despite commercially reasonable efforts to maintain the practices and procedures established.

(G) Any equipment, software, or other technology of a person who violates this section that is used or intended to be used in the commission of a violation of this section, and any real or personal property that constitutes or is traceable to the gross proceeds obtained from the commission of a violation of this section, is contraband and is subject to seizure and forfeiture pursuant to §§2933.42 and 2933.43.

(H) The attorney general may bring a civil action, pursuant to the "CAN-SPAM Act of 2003," 15 U.S.C. §7701 et seq., on behalf of the residents of the state in a district court of the United States that has jurisdiction for a violation of the CAN-SPAM Act of 2003, but the attorney general shall not bring a civil action under both this division and division (F). If a federal court dismisses a civil action brought under this division for reasons other than upon the merits, a civil action may be brought under division (F) in the appropriate court of common pleas of this state.

(I) Nothing in this section shall be construed:

(I)(1) To require an electronic mail service provider to block, transmit, route, relay, handle, or store certain types of electronic mail messages;

(1)(2) To prevent or limit, in any way, an electronic mail service provider from adopting a policy regarding electronic mail, including a policy of declining to transmit certain types of electronic mail messages, or from enforcing such policy through technical means, through contract, or pursuant to any remedy available under any other federal, state, or local criminal or civil law;

(1)(3) To render lawful any policy adopted under division (1)(2) that is unlawful under any other law.

*Created by House Bill 383, §1, Laws of 2004, effective May 6, 2005.*