

ILLINOIS

Portions of Title 720, Sections 5/16D-1 through 5/16D-3, of the *Illinois Compiled Statutes*, the Computer Crime Prevention Law, govern the transmission of unsolicited bulk electronic mail. Those provisions:

- Forbid a sender to falsify the routing information of an email;
- Make it illegal to distribute software designed to falsify routing information;
- Impose criminal penalties on violators; and
- Entitle a recipient or service provider to sue a violator for damages, attorney's fees, and costs.

Additionally, Title 815, Sections 511/1 through 511/15, of the *Illinois Compiled Statutes*, the Electronic Mail Act, govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to email delivered to an Illinois resident via a service provider's equipment located in Illinois;
- Forbid a sender to use another person's domain name without permission, or to misrepresent the routing information or subject line of an email;
- Require a sender to establish a mechanism by which a recipient can ask not to be contacted, and forbids the sale or transfer of those individuals' email addresses;
- Require the sender of an email containing advertising or sexually explicit material to put a label on its subject line;
- Entitle a recipient or service provider to sue a violator for damages, attorney's fees, and costs; and
- Classify a violation as a deceptive trade practice.

Illinois Compiled Statutes, Title 720

§5/16D-1. Short Title

This Article [§§5/16D-1 - 5/16D-7] shall be known and may be cited as the "Computer Crime Prevention Law."

Created by Public Act 85-926, §1, effective December 1, 1987.

§5/16D-2. Definitions Pertaining to Computer Crimes

As used in this Article, unless the context otherwise indicates:

(a) "Computer" means a device that accepts, processes, stores, retrieves or outputs data, and includes but is not limited to auxiliary storage and telecommunications devices connected to computers.

(a-5) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

(b) "Computer program" or "program" means a series of coded instructions or statements in a form acceptable to a computer which causes the computer to process data and supply the results of the data processing.

(b-5) "Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

(c) "Data" means a representation of information, knowledge, facts, concepts or instructions, including program documentation, which is prepared in a formalized manner and is stored or processed in or transmitted by a computer. Data shall be considered property and may be in any form including but not limited to printouts, magnetic or optical storage media, punch cards or data stored internally in the memory of the computer.

(c-5) "Electronic mail service provider" means any person who (1) is an intermediary in sending or receiving electronic mail and (2) provides to end-users of electronic mail services the ability to send or receive electronic mail.

(d) In addition to its meaning as defined in §15-1 of this Code [*Title 720, §5/15-1*], "property" means: (1) electronic impulses; (2) electronically produced data; (3) confidential, copyrighted or proprietary information; (4) private identification codes or numbers which permit access to a computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers; (5) software or programs in either machine or human readable form; or (6) any other tangible or intangible item relating to a computer or any part thereof.

(e) "Access" means to use, instruct, communicate with, store data in, retrieve or intercept data from, or otherwise utilize any services of a computer.

(f) "Services" includes but is not limited to computer time, data manipulation or storage functions.

(g) "Vital services or operations" means those services or operations required to provide, operate, maintain, and repair network cabling, transmission, distribution, or computer facilities necessary to ensure or protect the public health, safety, or welfare. Public health, safety, or welfare include, but are not limited to, services provided by medical personnel or institutions, fire departments, emergency services agencies, national defense contractors, armed forces or militia personnel, private and public utility companies, or law enforcement agencies.

Created by Public Act 85-926, §1, effective December 1, 1987. Amended by Public Act 91-233, §900, effective January 1, 2000.

§5/16D-3. Specific Offenses Involving Computers

(a) A person commits the offense of computer tampering when he knowingly and without the authorization of a computer's owner, as defined in §15-2 of this Code [*Title 720, §5/15-2*], or in excess of the authority granted to him:

(a)(1) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data;

(a)(2) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data, and obtains data or services;

(a)(3) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data, and damages or destroys the computer or

alters, deletes or removes a computer program or data;

(a)(4) Inserts or attempts to insert a "program" into a computer or computer program knowing or having reason to believe that such "program" contains information or commands that will or may damage or destroy that computer, or any other computer subsequently accessing or being accessed by that computer, or that will or may alter, delete or remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer, or that will or may cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such "program";

(a)(5) Falsifies or forges electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers;

(a-5) It shall be unlawful for any person knowingly to sell, give, or otherwise distribute or possess with the intent to sell, give, or distribute software which (1) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information; (2) has only a limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or (3) is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(a-10) For purposes of subsection (a), accessing a computer network is deemed to be with the authorization of a computer's owner if:

(a-10)(1) the owner authorizes patrons, customers, or guests to access the consumer network and the person accessing the computer network is an authorized patron, customer, or guest and complies with all terms or conditions for use of the computer network that are imposed by the owner; or

(a-10)(2) the owner authorizes the public to access the computer network and the person accessing the computer network complies with all terms or conditions for use of the computer network that are imposed by the owner.

(b) Sentence.

(b)(1) A person who commits the offense of computer tampering as set forth in subsection (a)(1), (a)(5), or (a-5) of this Section shall be guilty of a Class B misdemeanor.

(b)(2) A person who commits the offense of computer tampering as set forth in subsection (a)(2) of this Section shall be guilty of a Class A misdemeanor and a Class 4 felony for the second or subsequent offense.

(b)(3) A person who commits the offense of computer tampering as set forth in subsection (a)(3) or subsection (a)(4) of this Section shall be guilty of a Class 4 felony and a Class 3 felony for the second or subsequent offense.

(b)(4) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this Section, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

(b)(5) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney's fees and costs,

and may elect, in lieu of actual damages, to recover the greater of \$10 for each and every unsolicited electronic mail advertisement transmitted in violation of this Section, or \$25,000 per day.

(b)(6) The provisions of this Section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(c) Whoever suffers loss by reason of a violation of subsection (a)(4) of this Section may, in a civil action against the violator, obtain appropriate relief. In a civil action under this Section, the court may award to the prevailing party reasonable attorney's fees and other litigation expenses.

Created by Public Act 85-926, §1, effective December 1, 1987. Amended by Public Act 86-762, §1, effective January 1, 1990; Public Act 91-233, §900, effective January 1, 2000; and Public Act 95-326, §5, effective January 1, 2008.

Illinois Compiled Statutes, Title 815

§511/1. Short Title

This Act [§§511/1-511/15] may be cited as the Electronic Mail Act.

Created by Public Act 91-233, §1, effective January 1, 2000.

§511/5. Definitions Pertaining to Electronic Mail

As used in this Act:

"Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

"Unsolicited electronic mail advertisement" means any electronic mail advertisement that (i) is addressed to a recipient with whom the initiator does not have a prior or existing business or personal relationship and (ii) is not sent at the request of or with the express consent of the recipient.

"Electronic mail service provider" means any business or organization qualified to do business in Illinois 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.

"Initiation" of an electronic mail message refers to the action by the initial sender of the electronic mail message. "Initiation" does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic mail message.

"Registered user" means any individual or entity that maintains an electronic mail address with an electronic mail service provider.

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

"Internet domain name" refers to a globally unique, hierarchical reference to an

Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

Created by Public Act 91-233, §5, effective January 1, 2000.

§511/10. Unsolicited or Misleading Electronic Mail

(a) No individual or entity may initiate or cause to be initiated an unsolicited electronic mail advertisement if the electronic mail advertisement (i) uses a third party's Internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of an electronic mail advertisement or (ii) contains false or misleading information in the subject line.

(a-5) An initiator of an unsolicited electronic mail advertisement must establish a toll-free telephone number or valid sender-operated return electronic mail address that the recipient of the unsolicited electronic mail advertisement may call or electronically mail to notify the sender not to electronically mail any further unsolicited electronic mail advertisements.

(a-10) An initiator of an unsolicited electronic mail advertisement is prohibited from selling or transferring in any manner the electronic mail address of any person who has notified the initiator that the person does not want to receive any further unsolicited electronic mail advertisements.

(a-15) Each unsolicited electronic mail advertisement's subject line shall include "ADV:" as its first four characters. For any unsolicited electronic mail advertisement that contains information regarding 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 18 years of age and older, the subject line of each and every message shall include "ADV:ADLT" as the first eight characters.

(b) This Section applies when the unsolicited electronic mail advertisement is delivered to an Illinois resident via an electronic mail service provider's service or equipment located in this State.

(c) Any person, other than an electronic mail service provider, who suffers actual damages as a result of a violation of this Section committed by any individual or entity may bring an action against such individual or entity. The injured person may recover attorney's fees and costs, and may elect, in lieu of recovery of actual damages, to recover the lesser of \$10 for each and every unsolicited electronic mail advertisement transmitted in violation of this Section, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited electronic mail advertisement over its computer network.

(d) Any electronic mail service provider who suffers actual damages as a result of a violation of this Section committed by any individual or entity may bring an action against such individual or entity. The injured person may recover attorney's fees and costs, and may elect, in lieu of recovery of actual damages, to recover the lesser of \$10 for each and every unsolicited electronic mail advertisement transmitted in violation of this Section, or \$25,000 per day.

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

(f) An electronic mail service provider may, upon its own initiative, block the receipt or transmission through its service of any unsolicited electronic mail advertisement that it reasonably believes is, or will be, sent in violation of this Section.

(g) 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 unsolicited electronic mail advertisement which it reasonably believes is, or will be, sent in violation of this Section.

Created by Public Act 91-233, §10, effective January 1, 2000. Amended by Public Act 93-199, §5, effective January 1, 2004.

§511/15. Violation Classified as Deceptive Trade Practice

In addition to any other penalties specified in this Act, violation of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

Created by Public Act 91-233, §15, effective January 1, 2000.