

LOUISIANA

Sections 51:2001 through 51:2004 of the *Louisiana Revised Statutes Annotated* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to email sent from Louisiana or to a Louisiana email address;
- Require a sender to provide a mechanism by which a recipient can ask not to be contacted, and forbid the sending of email to a person who has asked not to be contacted;
- Forbid a sender to use another person's domain name without permission;
- Makes it illegal to falsify an email's routing information or to put misleading information on an email's subject line;
- Require a sender to put a label on the subject line of commercial email and email containing sexually-oriented material;
- Bar the selling or distribution of email addresses for the purpose of sending unsolicited commercial email; and
- Entitle a recipient or a service provider to sue a violator for damages, attorney's fees, and costs.

In addition, portions of Sections 14:73.1 through 14:73.7 of the *Louisiana Revised Statutes Annotated*, which apply to computer crimes in general, and portions of Section 14:106, which deals with obscenity, apply to the transmission of unsolicited bulk electronic mail. Those provisions:

- Generally require a sender to comply with his or her service provider's conditions of use;
- Forbid a sender to falsify the routing information of an email, or to distribute software designed to falsify routing information;
- Require the sender to put a label on the subject line of an email containing sexually explicit material; and
- Impose criminal penalties on violators.

La.. Rev. Stat. Ann.

§14:73.1. Definitions Pertaining to Computer Crimes

As used in this subpart [§§14:73.1 - 14:73.7] unless the context clearly indicates otherwise:

(1) "Access" means to program, to execute programs on, to communicate with, store data in, retrieve data from, or otherwise make use of any resources, including data or programs, of a computer, computer system, or computer network.

(2) "Computer" includes an electronic, magnetic, optical, or other high-speed data processing device or system performing logical, arithmetic, and storage functions, and includes any property, data storage facility, or communications facility directly related to or operating in conjunction with such device or system. "Computer" shall not include an automated typewriter or typesetter, a machine designed solely for word processing, or a portable hand-held calculator, nor shall "computer" include any other device which might contain components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended.

(3) "Computer network" means a set of related, remotely connected devices and communication facilities including at least one computer system with capability to

transmit data through communication facilities.

(4) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(5) "Computer services" means providing access to or service or data from a computer, a computer system, or a computer network, and also includes but is not limited to data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

(6) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with operation of a computer system.

(7) "Computer system" means a set of functionally related, connected or unconnected, computer equipment, devices, or computer software.

(8) "Electronic mail service provider" means any person who both:
(8)(a) Is an intermediary in sending or receiving electronic mail.
(8)(b) Provides to end-users of electronic mail services the ability to send or receive electronic mail.

(9) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, access card as defined in §14:67.3, or marketable security.

(10) "Intellectual property" includes data, computer programs, computer software, trade secrets as defined in §51:1431(4), copyrighted materials, and confidential or proprietary information, in any form or medium, when such is stored in, produced by, or intended for use or storage with or in a computer, a computer system, or a computer network.

(11) "Proper means" include:
(11)(a) Discovery by independent invention;
(11)(b) Discovery by "reverse engineering", that is by starting with the known product and working backward to find the method by which it was developed. The acquisition of the known product must be by lawful means;
(11)(c) Discovery under license or authority of the owner;
(11)(d) Observation of the property in public use or on public display; or
(11)(e) Discovery in published literature.

(12) "Property" means property as defined in §14:2(8) and shall specifically include but not be limited to financial instruments, electronically stored or produced data, and computer programs, whether in machine readable or human readable form.

(13) "Unsolicited bulk electronic mail" means any electronic message which is developed and distributed in an effort to sell or lease consumer goods or services and is sent in the same or substantially similar form to more than 1,000 recipients.

Created by §1, Act No. 711 of 1984, effective September 3, 1984. Amended by §1, Act No. 1180 of 1999, effective August 15, 1999.

§14:73.6. Unauthorized or Fraudulent Use of Computer

A. It shall be unlawful for any person to use a computer, a computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of electronic mail from an organization to its members or noncommercial electronic mail transmissions shall not be deemed to be unsolicited bulk electronic mail.

B. It is unlawful for any person to use a computer or computer network without authority with the intent to falsify or forge 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. It is also unlawful for any person knowingly to sell, give, or otherwise distribute or possess with the intent to sell, give, or distribute software which is any of the following:

B.(1) Primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information.

B.(2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information.

B.(3) 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.

C. Whoever violates the provisions of this section shall be fined not more than \$5,000.

D. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software, or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, an electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this section.

Created by §1, Act No. 1180 of 1999, effective August 15, 1999.

§14:106. Obscenity: Prohibited Conduct; Penalties

A. The crime of obscenity is the intentional:

A.(1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.

A.(2)(a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.

A.(2)(b) Hard core sexual conduct is the public portrayal, for its own sake, and for ensuing commercial gain of:

A.(2)(b)(i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or

A.(2)(b)(ii) Masturbation, excretory functions or lewd exhibition,

actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or

A.(2)(b)(iii) Sadomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or

A.(2)(b)(iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or

A.(2)(b)(v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.

A.(3)(a) Sale, allocation, consignment, distribution, dissemination, advertisement, exhibition, electronic communication, or display of obscene material, or the preparation, manufacture, publication, electronic communication, or printing of obscene material for sale, allocation, consignment, distribution, advertisement, exhibition, electronic communication, or display.

A.(3)(b) Obscene material is any tangible work or thing which the trier of fact determines that the average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest, and which depicts or describes in a patently offensive way, hard core sexual conduct specifically defined in paragraph (A)(2), and the work or thing taken as a whole lacks serious literary, artistic, political, or scientific value.

A.(4) Requiring as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication to a purchaser or consignee that such purchaser or consignee also receive or accept any obscene material, as defined in paragraph (A)(3), for resale, distribution, display, advertisement, electronic communication, or exhibition purposes; or, denying or threatening to deny a franchise to, or imposing a penalty, on or against, a person by reason of his refusal to accept, or his return of, such obscene material.

A.(5) Solicitation or enticement of an unmarried person under the age of 17 years to commit any act prohibited by paragraphs (A)(1), (A)(2), or (A)(3).

A.(6) Advertisement, exhibition, electronic communication, or display of sexually violent material. "Violent material" is any tangible work or thing which the trier of fact determines depicts actual or simulated patently offensive acts of violence, including but not limited to, acts depicting sadistic conduct, whippings, beatings, torture, and mutilation of the human body, as described in sub-subparagraph A(2)(b)(iii).

A.(7) (a) No person, knowing the content of an advertisement to be sexually explicit as defined in this paragraph shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication to one or more persons within this state that contains sexually explicit materials without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement. A "subject line" is the area of an electronic communication that contains a summary description of the content of the message.

A.(7)(b) As used in this paragraph, "sexually explicit" means the graphic depiction of sex, including, but not limited to, sexual audio, text, or images; depiction of sexual activity; nudity; or sexually oriented language.

B. Lack of knowledge of age or marital status shall not constitute a defense.

C. If any employee of a theatre or bookstore acting in the course or scope of his employment, is arrested for an offense designated in this section, the employer shall reimburse the employee for all attorney's fees and other costs of defense of such employee. Such fees and expenses may be fixed by the court exercising criminal jurisdiction after contradictory hearing or by ordinary civil process.

D.(1) The provisions of this section do not apply to recognized and established schools, churches, museums, medical clinics, hospitals, physicians, public libraries, governmental agencies, quasi-governmental sponsored organizations and persons acting in their capacity as employees or agents of such organizations, or a person solely employed to operate a movie projector in a duly licensed theatre.

D.(2) For the purpose of this paragraph, the following words and terms shall have the respective meanings defined as follows:

D.(2)(a) "Recognized and established schools" means schools having a full time faculty and pupils, gathered together for instruction in a diversified curriculum.

D.(2)(b) "Churches" means any church, affiliated with a national or regional denomination.

D.(2)(c) "Physicians" means any licensed physician or psychiatrist.

D.(2)(d) "Medical clinics and hospitals" means any clinic or hospital of licensed physicians or psychiatrists used for the reception and care of the sick, wounded or infirm.

E. This section does not preempt, nor shall anything in this section be construed to preempt, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments; however, in order to promote uniform obscenity legislation throughout the state, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this section.

F.(1) Except for those motion pictures, printed materials, electronic communication, and photographic materials showing actual ultimate sexual acts or simulated or animated ultimate sexual acts when there is an explicit, closeup depiction of human genital organs so as to give the appearance of the consummation of ultimate sexual acts, no person, firm, or corporation shall be arrested, charged, or indicted for any violations of a provision of this Section until such time as the material involved has first been the subject of an adversary hearing under the provisions of this section, wherein such person, firm, or corporation is made a defendant and, after such material is declared by the court to be obscene, such person, firm, or corporation continues to engage in the conduct prohibited by this Section. The sole issue at the hearing shall be whether the material is obscene.

F.(2) The hearing shall be held before the district court having jurisdiction over the proceedings within 72 hours after receipt of notice by the person, firm, or corporation. The person, firm, or corporation shall be given notice of the hearing by registered mail or by personal service on the owner, manager, or other person having a financial interest in the material; provided, if there is no such person on the premises, then notice may be given by personal service on any employee of the person, firm, or corporation on such premises. The notice shall state the nature of the violation, the date, place, and time of the hearing, and the right to present and cross-examine witnesses.

F.(3) The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this section subsequent to notice of the judgment, finding the material to be obscene, shall be

subject to criminal prosecution notwithstanding the appeal from the judgment.

F.(4) No determination by the district court pursuant to this section shall be of any force and effect outside the judicial district in which made and no such determination shall be res judicata in any proceeding in any other judicial district. In addition, evidence of any hearing held pursuant to this section shall not be competent or admissible in any criminal action for the violation of any other section of this title; provided, however, that in any criminal action, charging the violation of any other section of this title, against any person, firm, or corporation that was a defendant in such hearing, involving the same material declared to be obscene under the provisions of this section, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only.

G.(1) On a first conviction, whoever commits the crime of obscenity shall be fined not less than \$1,000 nor more than \$2,500, or imprisoned, with or without hard labor, for not less than six months nor more than three years, or both.

G.(2)(a) On a second conviction, the offender shall be imprisoned, with or without hard labor for not less than six months nor more than three years, and in addition may be fined not less than \$2,500 nor more than \$5,000.

G.(2)(b) The imprisonment provided for in subparagraph (a), may be imposed at court discretion if the court determines that the offender, due to his employment, could not avoid engagement in the offense. This subparagraph (b) shall not apply to the manager or other person in charge of an establishment selling or exhibiting obscene material.

G.(3) On a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than two years nor more than five years, and in addition may be fined not less than \$5,000 nor more than \$10,000.

G.(4) When a violation of paragraph (A)(1), (A)(2), or (A)(3) is with or in the presence of an unmarried person under the age of 17 years, the offender shall be fined not more than \$10,000 and shall be imprisoned, with or without hard labor, for not less than two years nor more than five years, without benefit of parole, probation, or suspension of sentence.

H.(1) When a corporation is charged with violating this section, the corporation, the president, the vice president, the secretary, and the treasurer may all be named as defendants. Upon conviction for a violation of this section, a corporation shall be sentenced in accordance with subsection (G). All corporate officers who are named as defendants shall be subject to the penalty provisions of this section as set forth in subsection (G).

H.(2) If the corporation is domiciled in this state, upon indictment or information filed against the corporation, a notice of arraignment shall be served upon the corporation, or its designated agent for service of process, which then must appear before the district court in which the prosecution is pending to plead to the charge within 15 days of service. If no appearance is made within 15 days, an attorney shall be appointed by the court to represent the defendant corporation with respect to the charge or to show cause why the corporation should not be enjoined from continuing in business during the pendency of the criminal proceedings. Appearance for arraignment may be made through private counsel.

H.(3) If the corporation is domiciled out of state and is registered to do business in Louisiana, notice of arraignment shall be served upon the corporate agent for service of process or the secretary of state, who shall then notify the corporation charged by indictment or information to appear before the district court in which the prosecution is pending for arraignment within 60 days after the notice is mailed by the secretary of state. If no appearance is made within 60 days the court shall appoint an attorney to represent the defendant corporation with respect to the charge or to

show cause why the corporation should not be enjoined from continuing in business during the pendency of the criminal proceedings. Appearance for arraignment may be made by private counsel.

H.(4) If the corporation is domiciled out of state and is not registered to do business in Louisiana, notice of arraignment of the corporation shall be served upon the secretary of state and an employee, officer, or agent for service of process of the corporation found within the parish where the violation of this section has allegedly occurred. Such notice shall act as a bar to that corporation registering to do business in Louisiana until it appears before the district court in which the prosecution is pending to answer the charge.

Amended by §1, Act No. 314 of 1950; §1, Act No. 388 of 1958; §1, Act No. 199 of 1960; §1, Act No. 87 of 1962; §1, Act No. 647 of 1968; §1, Act No. 167 of 1970; §1, Act No. 605 of 1972; §1, Act No. 743 of 1972; §1, Act No. 274 of 1974; §2, Act No. 97 of 1977; §1, Act No. 717 of 1977, effective July 20, 1977; §1, Act No. 252 of Acts 1979; §1, Act No. 464 of 1980; §1, Act No. 159 of 198; §1, Act No. 680 of 1982; §1, Act No. 384 of 1983; §1, Act No. 385 of 1983; §1, Act No. 177 of 2001; §1, Act No. 403 of 2001, effective June 15, 2001; and §1, Act No. 237 of 2003, effective August 15, 2003.

§51:2001. Definitions Pertaining to Unsolicited Electronic Mail

For the purposes of this chapter [§§51:2001-51:2004], the following words shall have the meanings hereinafter ascribed to them:

(1) "Commercial electronic mail advertisement" means any electronic mail message initiated for the primary purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

(2) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic mail address on the internet.

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

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An "electronic mail address" may include a user name or mailbox and a reference to an internet domain.

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

(6) "Functioning return electronic mail address" means an electronic mail address displayed in a commercial electronic mail advertisement that has the capacity to receive the number of reply messages that the sender of the commercial electronic mail advertisement should reasonably expect to be transmitted by the recipients for no less than 30 days after the sending of such advertisements.

(7) "Header information" means the source, destination, and routing information attached at the beginning of an electronic mail message, including the originating domain name and originating electronic mail message.

(8) "Initiate the transmission of a commercial electronic mail advertisement" means to transmit or cause to be transmitted a commercial electronic mail advertisement or assist in the transmission of a commercial electronic mail advertisement by providing or selecting electronic mail addresses to which the advertisement may be sent, but does not include the transmission by a telecommunications utility or an electronic mail service provider of the advertisement at the direction of another person through the network or system of a telecommunications utility or an electronic mail service provider.

(9) "Internet" means the international computer network of both federal or nonfederal interoperable packet switched data networks.

(10) "Louisiana electronic mail address" means any of the following:

(10)(a) An electronic mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that electronic mail address in this state.

(10)(b) An electronic mail address ordinarily accessed from a computer located in this state.

(10)(c) An electronic mail address furnished to a resident of this state.

(11) "Obscene material" means any tangible work or thing which the trier of fact determines:

(11)(a) The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest.

(11)(b) Depicts or describes in a patently offensive way, hard-core sexual conduct as specifically provided in §14:106(A)(2).

(11)(c) The work or thing, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(12) "Recipient" means the addressee of a commercial electronic mail advertisement. If an addressee of a commercial electronic mail advertisement has one or more electronic mail addresses to which a commercial electronic mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each address to which the advertisement is sent.

(13) "Sender" means a person who initiates a commercial electronic mail advertisement.

(14) "Unsolicited commercial electronic (sic) message" means a commercial electronic mail message sent without the consent of the recipient, by a person with whom the recipient does not have a preexisting or current business relationship. The term "unsolicited commercial electronic mail message" does not include electronic mail messages where the sender:

(14)(a) Is an organization using electronic mail to communicate exclusively with its members.

(14)(b) Is an organization using electronic mail to communicate exclusively with its employees or contractors, or both.

(14)(c) Has the consent of the recipient.

Created as §51:1741 by §1, Act No. 1275 of 2003, effective August 15, 2003. Renumbered in

2006 by the Revisor of Statutes.

§51:2002. Obligations of Sender of Unsolicited Commercial Electronic Mail

Any sender of unsolicited commercial electronic mail advertisements either from Louisiana or to a Louisiana electronic mail address shall do all of the following:

- (1) Maintain a functioning return electronic mail address to which a recipient may send a reply indicating the recipient's desire not to receive further commercial electronic mail advertisements from the sender at the electronic mail address at which the message was received.
- (2) Maintain a functioning website at which a recipient may request his removal from the sender's mailing list.
- (3) Clearly and conspicuously disclose in the commercial electronic mail advertisement all of the following:
 - (3)(a) The recipient's right to decline to receive further unsolicited commercial electronic mail advertisements at the electronic mail address at which the message was received.
 - (3)(b) The recipient's ability to decline to receive further unsolicited commercial electronic mail advertisements by sending a message to the sender's functioning return electronic mail address.
 - (3)(c) The sender's functioning return electronic mail address.
- (4) Include in the subject line of the commercial electronic mail advertisement "ADV:" as the first four characters.
- (5) If the commercial electronic mail advertisement contains obscene material, include in the subject line of the commercial electronic mail advertisement "ADV:ADLT" as the first eight characters.

Created by as §51:1741.1 by §1, Act No. 1275 of 2003, effective August 15, 2003.

Renumbered in 2006 by the Revisor of Statutes.

§51:2003. Prohibited Acts by Senders

A. It is unlawful for any person knowingly to initiate the transmission of an unsolicited commercial electronic mail advertisement either from Louisiana or to a Louisiana electronic mail address under any of the following circumstances:

- A.(1) The commercial electronic mail advertisement contains or is accompanied by a third party's domain name without permission of the third party.
- A.(2) The commercial mail advertisement contains or is accompanied by falsified, misrepresented, intentionally obscured, or forged header information.
- A.(3) The commercial mail advertisement has a subject line that is intended to mislead the public about the contents of the advertisement.
- A.(4) The sender is in violation of §51:2002 or the commercial electronic mail advertisement does not contain the notice required by §51:2004.
- A.(5) More than 21 business days after the recipient of an unsolicited commercial electronic mail advertisement has informed the sender, by use of the functioning return electronic mail address or by other electronic means communicated to and specified by the sender, that the recipient does not wish to receive unsolicited

commercial electronic mail advertisements at that electronic mail address.

A.(6) An employer has informed the sender, as provided in subsection C, not to send further unsolicited commercial electronic mail advertisements to designated electronic mail addresses.

B. It is unlawful for any person to knowingly sell or otherwise provide a list of electronic mail addresses to be used to:

B.(1) Initiate the transmission of unsolicited commercial electronic mail advertisements in violation of this chapter from Louisiana.

B.(2) Initiate the transmission of unsolicited commercial electronic mail advertisements in violation of this chapter to a Louisiana electronic mail address.

C. An employer who provides or has control over one or more electronic mail addresses used by his employers may notify the sender of an unsolicited commercial electronic mail advertisement, by use of the functioning return electronic mail address or by other electronic means communicated to the sender, that no further commercial electronic mail advertisements should be transmitted to any of the employer-provided and employer-controlled electronic mail addresses.

Created as §51:1471.2 by §1, Act No. 1275 of 2003, effective August 15, 2003. Renumbered in 2006 by the Revisor of Statutes.

§51:2004. Civil Action Against Violators

A. Any person whose property or person is injured by reason of a violation of any provision of this chapter may recover for any damages sustained and the costs of suit. For the purposes of this section, the term "damages" shall include but not be limited to loss of profits.

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

C. If the injury arises from the transmission of unsolicited or commercial electronic mail messages, an injured electronic mail service provider may also recover attorney fees and costs and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited electronic mail message transmitted in violation of this chapter, or \$25,000 per day.

D. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

E. An electronic mail service provider shall not be deemed in violation of this chapter and the injured party shall not have a cause of action against an electronic mail service provider due to the fact that the electronic mail service provider:

E.(1) Is an intermediary between the sender and recipient in the transmission of an electronic mail that violates this chapter.

E.(2) Provides transmission of unsolicited commercial electronic mail messages over the provider's computer network or facilities or shall be liable for any action it voluntarily takes in good faith to block the receipt or transmission through the service of any electronic mail advertisements that it believes is or will be sent in violation of this chapter.

Created as §51:1471.3 by §1, Act No. 1275 of 2003, effective August 15, 2003. Renumbered in 2006 by the Revisor of Statutes.