

MAINE

Title 10, Section 1497 of the *Maine Revised Statutes Annotated* governs the transmission of unsolicited commercial electronic mail. That code section:

- Applies to email sent to two or more Maine residents;
- Requires a sender to put a label on the subject line of a commercial or sexually-oriented email;
- Makes it mandatory for a sender to provide a mechanism by which the recipient can ask not to be contacted, and forbids the sending of email to a person who has asked not to be contacted;
- Forbids a sender to use another person's email address or domain name without permission;
- Makes it illegal for a sender to falsify an email's routing information;
- Classifies violations as unfair trade practices; and
- Entitles a recipient or a service provider to sue a violator for damages, attorney's fees and costs, and an order enjoining the sending of future emails.

Me. Rev. Stat. Ann., Title 10

§1497. Restrictions on Unsolicited Commercial Electronic Mail

1. As used in this chapter [*Title 10, §1497*], unless the context otherwise indicates, the following terms have the following meanings.

1.A. "E-mail" means electronic mail sent or delivered by transmission over the Internet.

1.B. "E-mail service provider" means a business or organization qualified to do business in this State that provides individuals, corporations or other entities the ability to send or receive e-mail through equipment located in this State or that is an intermediary in sending or receiving e-mail.

1.C. "Unsolicited commercial e-mail" means an e-mail, other than an e-mail sent at the request of the recipient, sent via an e-mail service provider to two or more recipients in this State with whom the sender does not have an existing business relationship for the purpose of:

- 1.C.(1) Offering real property, goods or services for sale or rent;
- 1.C.(2) Conveying information on real property, goods or services to solicit sales or purchase;
- 1.C.(3) Conveying information on the extension of credit; or
- 1.C.(4) Promoting or soliciting charitable contributions.

"Unsolicited commercial e-mail" does not include an e-mail message to which an e-mail service provider has attached an advertisement if the e-mail service provider has an agreement with the recipient under which the e-mail service provider allows the recipient free use of an e-mail account in exchange for allowing the e-mail service provider to send such advertisements.

2. A person sending unsolicited commercial e-mail shall maintain a valid return e-mail address through which the recipient may provide notice to the sender that the recipient does not wish to receive any more unsolicited commercial e-mail.

3. All unsolicited commercial e-mail must contain:

3.A. In the subject line:

- 3.A.(1) The first four characters as follows: "ADV:"; and
- 3.A.(2) If the unsolicited commercial e-mail contains information about material

that may be viewed only by a person at least 18 years of age, the first eight characters as follows: "ADV:ADLT";

3.B. A statement informing the recipient of the name of the person or entity from which the unsolicited commercial e-mail originated;

3.C. The return e-mail address required by subsection (2); and

3.D. A statement informing the recipient that the recipient may use the return e-mail address to notify the sender that the recipient does not want to receive any more unsolicited commercial e-mails from the sender.

4. A person receiving notification from a recipient that the recipient does not wish to receive any more unsolicited commercial e-mails from that person shall cease to send unsolicited commercial e-mails to that recipient. If a recipient is the registered owner of more than one e-mail address and notifies the sender of unsolicited commercial e-mails to cease sending unsolicited commercial e-mails to all of the e-mail addresses registered to that person or entity, the sender shall cease to send unsolicited commercial e-mails to those addresses.

5. A person may not:

5.A. Send an unsolicited commercial e-mail that uses a third party's Internet address or domain name without the third party's consent; or

5.B. Falsify the e-mail transmission information or other routing information of an unsolicited commercial e-mail.

6. Violation of this chapter is an unfair trade practice as prohibited by Title 5, §207 [*which generally prohibits unfair trade practices*]. Each unsolicited commercial e-mail transmission to a recipient in violation of this chapter constitutes a separate violation. The Attorney General shall establish procedures for receiving and investigating complaints of violations of this chapter. The procedures may include the development of electronic forms, available over the Internet, by which a person may file a complaint with the Attorney General alleging a violation of this chapter.

7. Notwithstanding Title 5, §213 [*which provides that a waiver of a consumer's rights is void*], a person who receives a commercial e-mail sent in violation of this chapter may bring an action in an appropriate state court for either or both of the following:

7.A. An injunction to stop such future e-mails; and

7.B. Recovery of actual damages from each violation or up to \$250 in damages for each violation, whichever is greater.

If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount available under paragraph (7)(B).

8. Notwithstanding Title 5, §213, an e-mail service provider through whose service is sent a commercial e-mail in violation of this chapter may bring an action in an appropriate state court for either or both of the following:

8.A. An injunction to stop such future e-mails; and

8.B. Recovery of actual damages from each violation or up to \$1,000 in damages for each violation, whichever is greater.

If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount available under paragraph (7)(B).

9. An e-mail service provider may, upon its own initiative, block the receipt or transmission through its service of any commercial e-mail that it reasonably believes is or will be sent in violation of this chapter. An e-mail service provider is not liable for any action taken in good faith to block the receipt or transmission through its service of any commercial e-mail that it reasonably believes is or will be sent in violation of this chapter.

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