

NEW MEXICO

Portions of Sections 57-12-23 and 57-12-24 of the *New Mexico Statutes Annotated* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to persons doing business in New Mexico;
- Require the sender of unsolicited commercial email to provide a mechanism by which the recipient can use to ask not to be contacted;
- Forbid the sending of commercial email to a person who has asked not to receive it;
- Require the sender to put a label in the subject line of a commercial email or a solicitation for goods or services not legally available to minors;
- Generally forbid a person to help another person commit a violation;
- Classify a violation as an unfair or deceptive trade practice; and
- Entitle a recipient or a service provider to sue for damages, attorney's fees, and costs.

N.M. Stat. Ann.

§57-12-23. Prohibited Acts Relating to Unsolicited Commercial Electronic Mail

A. No person conducting business in this state shall transmit by facsimile or cause to be transmitted by facsimile an unsolicited advertisement unless:

A.(1) the person establishes a toll-free telephone number that a recipient of the unsolicited advertisement may call to notify the person not to send the recipient any additional unsolicited advertisement; and

A.(2) the unsolicited advertisement includes a statement, in at least nine-point type, informing the recipient of the toll-free telephone number that the recipient may call to notify the sender not to send the recipient any additional unsolicited information.

B. No person conducting business in this state shall email or cause to be emailed an unsolicited advertisement unless:

B.(1) the person establishes a toll-free telephone number or a valid sender-operated return email address that a recipient of the unsolicited advertisement may call or email to notify the person not to send the recipient any additional unsolicited advertisement;

B.(2) the unsolicited advertisement includes a statement, in the first text of the body of the message and in the same size as the majority of the text of the message, informing the recipient of the toll-free telephone number or the email address that the recipient may call or email to notify the sender not to send the recipient any additional unsolicited advertisement;

B.(3) the subject line of the email includes "ADV:" as the first four characters; and

B.(4) if the unsolicited advertisement advertises realty, goods, services, intangibles or the extension of credit that may only be viewed, purchased, licensed, rented, leased or held in the possession by an individual 18 years of age or older, the subject line of the email includes "ADV:ADLT" as the first eight characters.

C. After notification by a recipient of the recipient's request not to receive any further unsolicited advertisement, no person conducting business in this state shall transmit by facsimile, cause to be transmitted by facsimile, email or cause to be emailed any unsolicited advertisement to that recipient.

D. In the case of an employer who is the registered owner of more than one email address, the notification required by Subsection (C) of this section may be given by the employer on

behalf of all of the employees who may use email addresses provided and controlled by the employer.

E. No person shall knowingly or intentionally assist in the transmission of an unsolicited advertisement by facsimile or email if the person knows, or consciously avoids knowing, that the initiator of the advertisement is engaged, or intends to engage, in a violation of this section.

F. A violation of a provision of this section constitutes an unfair or deceptive trade practice.

G. As used in this section and §57-12-24:

G.(1) "transmit by facsimile", "cause to be transmitted by facsimile", "email", "cause to be emailed" or "assist in the transmission" does not include the transmission of an unsolicited advertisement by a telecommunications utility or an internet service provider that merely carries the transmission over its network or who acts or fails to act as allowed by contract or other law, including but not limited to 47 U.S.C.

§230(c) [*which protects service providers who block offensive material*]; and

G.(2) "unsolicited advertisement" means information transmitted by facsimile or email that:

G.(2)(a) advertises the lease, sale, license, rental, gift offer or other disposition of any realty, goods, services, intangibles or the extension of credit; and

G.(2)(b) is addressed to a recipient with whom the sender does not have an existing business or personal relationship; or

G.(2)(c) is not sent at the request of, or with the express consent of, the recipient.

Created by Chapter 168, §2, Laws of 2003, effective June 20, 2003.

§57-12-24. Recipient's or Service Provider's Remedies Against Violators

A. Any person who receives an unsolicited advertisement by facsimile or email may bring an action against the sender of the unsolicited advertisement to recover actual damages, including loss of profits, or statutory damages equal to the greater of \$25 for each email or facsimile received or \$5,000 for each day of violation, plus reasonable attorney fees and costs if, prior to receiving the unsolicited advertisement:

A.(1) the person who received the unsolicited advertisement has notified the sender, pursuant to the provisions of §57-12-23, of the person's request not to receive unsolicited advertisements; or

A.(2) the sender of the unsolicited advertisement has entered into a written assurance of discontinuance pursuant to §57-12-9 [*which applies to violations of the Unfair Practices Act*].

B. A telecommunications utility or internet service provider, injured by a violation of a provision of §57-12-23 or this section, may recover actual damages, including loss of profits, or statutory damages equal to the greater of \$10 for each facsimile or email transmitted or \$5,000 for each day of violation plus reasonable attorney fees and costs.

C. The remedies provided in this section are in addition to any available remedies otherwise provided by law.

Created by Chapter 168, §3, Laws of 2003, effective June 20, 2003.