



## Ohio Revised Code

### Section 2307.64 Regulating electronic mail advertisements.

Effective: December 20, 2012

Legislation: House Bill 360 - 129th General Assembly

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(A) As used in this section:

- (1) "Advertisement" has the same meaning as in section 4931.10 of the Revised Code.
- (2) "Computer," "computer network," "computer program," "computer services," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.
- (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.
- (4) "Electronic mail advertisement" means electronic mail containing an advertisement.
- (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.
- (6) "Originating address" means the string of characters used to specify the source of any electronic mail message.
- (7) "Person" has the same meaning as in section 1.59 of the Revised Code, 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.
- (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) of this section and a reasonable amount of time has expired since that request.

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

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

(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;

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

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

(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) of this section, 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:

(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) 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.

(2) If the recipient of an electronic mail advertisement uses the procedure contained in the notice described in division (B)(1)(b) of this section 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.

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

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

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

(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) of this section 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:

- (1) One hundred dollars for each violation, not to exceed a total of fifty thousand dollars;
- (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) of this section 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:

(1)(a) Fifty dollars for each violation of division (C) of this section, not to exceed fifty thousand dollars;

(b) If a violation of division (C) of this section is a willful or knowing violation, the court may increase the amount recoverable to an amount not to exceed five hundred thousand dollars.

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

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

(G) In addition to any recovery that is allowed under division (E) or (F) of this section, the recipient of an electronic mail advertisement transmitted in violation of division (B) of this section or the electronic mail service provider of an advertisement transmitted in violation of division (C) of this section 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 section 2913.31 of the Revised Code.