S T A T E O F N E W Y O R K

3357

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRADLEY, CHRISTENSEN, DelMONTE, GALEF, FIELDS, COOK -- Multi-Sponsored by -- M. of A. HOOPER, KOON, MAYERSOHN, McENENY, PHEFFER, REILLY, ROBINSON, WEISENBERG -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to unauthorized and misleading electronic mail

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The business corporation law is amended by adding a new article 17 to read as follows:

ARTICLE 17

UNAUTHORIZED AND

FALSE OR MISLEADING ELECTRONIC MAIL

SECTION 1701. FALSE OR MISLEADING ELECTRONIC MAIL; PROHIBITION.

S 1701. FALSE OR MISLEADING ELECTRONIC MAIL; PROHIBITION.

(A) NO PERSON OR ENTITY SHALL INITIATE THE TRANSMISSION, SOLICIT OR PROCURE ANOTHER TO INITIATE THE TRANSMISSION, OR ASSIST IN THE TRANSMISSION OF A COMMERCIAL ELECTRONIC MAIL MESSAGE FROM A COMPUTER LOCATED IN THIS STATE OR TO AN ELECTRONIC MAIL ADDRESS THAT THE SENDER KNOWS, OR HAS REASON TO KNOW, IS HELD BY A RESIDENT OF THIS STATE THAT:

(1) USES A THIRD PARTY'S INTERNET DOMAIN NAME WITHOUT PERMISSION OF THE THIRD PARTY, OR OTHERWISE MISREPRESENTS OR OBSCURES ANY INFORMATION IN IDENTIFYING THE POINT OF ORIGIN OR THE TRANSMISSION PATH OF A COMMERCIAL ELECTRONIC MAIL MESSAGE INCLUDING, BUT NOT LIMITED TO, ANY IMBEDDED OR OTHERWISE INVISIBLE OR INACCESSIBLE INFORMATION REGARDING THE POINT OF ORIGIN OR TRANSMISSION PATH OF THE COMMERCIAL ELECTRONIC MAIL MESSAGE; OR

(2) CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT LINE; OR

(3) OTHERWISE CONTAINS FALSE OR MISLEADING INFORMATION OR CONTENT; OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(4) OTHERWISE CONTAINS AN ATTACHED FILE THAT IS FALSE OR LIKELY TO MISLEAD THE RECIPIENT.

(B) FOR PURPOSES OF THIS SECTION:

(I) MISLEADING AND/OR UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES SHALL BE KNOWN AS SPAM, AND SHALL CONSIST OF COMMERCIAL ELECTRONIC MAIL SENT TO A PERSON WHO:

(1) DOES NOT HAVE AN EXISTING PERSONAL OR BUSINESS RELATIONSHIP WITH THE SENDER; AND

(2) HAS NOT GIVEN PERMISSION FOR OR REQUESTED THE SENDING OF COMMERCIAL ELECTRONIC MAIL.

(II) COMPUTER SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION 156.00 OF THE PENAL LAW.

(C) A VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OF THIS SECTION SHALL BE A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO FIVE HUNDRED DOLLARS FOR EACH INCIDENT, A TERM OF IMPRISONMENT OF UP TO ONE YEAR, OR BOTH SUCH FINE AND IMPRISONMENT. TRANSMISSION OF THE MESSAGE TO EACH RECIPIENT SHALL CONSTITUTE A DISTINCT AND SEPARATE INCIDENT FOR THE PURPOSES OF THIS SECTION.

(D) A PERSON WHO HIRES, EMPLOYS, USES, OR PERMITS A MINOR TO ASSIST IN THE TRANSMISSION OF ELECTRONIC MAIL IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (A) OF THIS SECTION IS GUILTY OF A CLASS E FELONY AND IS PUNISHABLE BY A FINE OF UP TO TEN THOUSAND DOLLARS FOR EACH INCIDENT, A TERM OF IMPRISONMENT OF UP TO THREE YEARS, OR BOTH SUCH FINE AND IMPRISONMENT.

(E) IN ADDITION TO ANY OTHER PENALTY IMPOSED PURSUANT TO THIS SECTION, THE FOLLOWING PENALTIES SHALL BE IMPOSED:

(1) IF AN INDIVIDUAL OR ENTITY CAUSES OR ASSISTS IN THE TRANSMISSION OF OR TRANSMITS MORE THAN TEN THOUSAND SPAM MESSAGES IN ANY TWENTY-FOUR HOUR PERIOD, SUCH INDIVIDUAL OR ENTITY SHALL BE GUILTY OF A CLASS E FELONY, AND IS PUNISHABLE BY A FINE OF UP TO FIVE THOUSAND DOLLARS, A TERM OF IMPRISONMENT OF UP TO TWO YEARS, OR BOTH SUCH FINE AND IMPRISONMENT.

(2) IF AN INDIVIDUAL OR ENTITY CAUSES OR ASSISTS IN THE TRANSMISSION OF OR TRANSMITS MORE THAN ONE HUNDRED THOUSAND SPAM MESSAGES IN ANY THIRTY DAY PERIOD, SUCH INDIVIDUAL OR ENTITY SHALL BE GUILTY OF A CLASS E FELONY, AND IS PUNISHABLE BY A FINE OF UP TO TEN THOUSAND DOLLARS, A TERM OF IMPRISONMENT OF UP TO THREE YEARS, OR BOTH SUCH FINE AND IMPRISONMENT.

(3) IF AN INDIVIDUAL OR ENTITY CAUSES OR ASSISTS IN THE TRANSMISSION OF OR TRANSMITS MORE THAN ONE MILLION SPAM MESSAGES IN ANY ONE YEAR PERIOD, SUCH INDIVIDUAL OR ENTITY SHALL BE GUILTY OF A CLASS E FELONY, AND IS PUNISHABLE BY A FINE OF UP TO TWENTY-FIVE THOUSAND DOLLARS, A TERM OF IMPRISONMENT OF UP TO FIVE YEARS, OR BOTH SUCH FINE AND IMPRISONMENT.

(F) (1) THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY MAY COMMENCE A CRIMINAL ACTION PURSUANT TO THIS SECTION.

(2) IN ADDITION TO ANY CRIMINAL CHARGES, A PRIVATE INDIVIDUAL MAY COMMENCE A CIVIL ACTION AGAINST ANY PERSON OR ENTITY WHO VIOLATES THE PROVISIONS OF THIS SECTION AGAINST SUCH PRIVATE INDIVIDUAL. THE PRIVATE INDIVIDUAL SHALL BE ENTITLED TO HIS OR HER ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER. THE COURT SHALL AWARD COURT COSTS AND DISBURSEMENTS TO A PREVAILING PLAINTIFF. THE COURT SHALL ALSO AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.