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

4991

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the transmission of unsolicited bulk electronic mail through an electronic mail service provider's network located in this state

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

Section 1. The general business law is amended by adding a new section 396-ii to read as follows:

S 396-II. UNLAWFUL TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL. 1. IT SHALL BE UNLAWFUL FOR A PERSON OR OTHER ENTITY TO TRANSMIT OR CAUSE THE TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL TO OR THROUGH AN ELECTRONIC MAIL SERVICE PROVIDER'S COMPUTER NETWORK LOCATED IN THIS STATE. FOR PURPOSES OF THIS SECTION: (A) "COMPUTER SERVICES" MEANS COMPUTER TIME, INCLUDING DATA PROCESSING SERVICES, INTERNET SERVICES, ELECTRONIC MAIL SERVICES, ELECTRONIC MESSAGE SERVICES, OR INFORMATION OR DATA STORED IN CONNECTION THEREWITH. (B) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON OR OTHER ENTITY WHO OR WHICH (I) IS AN INTERMEDIARY SENDING OR RECEIVING ELECTRONIC MAIL AND (II) PROVIDES TO END-USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL.

2. NO PERSON OR OTHER ENTITY SHALL WITHOUT AUTHORITY TRANSMIT OR CAUSE TO BE TRANSMITTED ANY UNSOLICITED ELECTRONIC MAIL. A PERSON OR OTHER ENTITY IS "WITHOUT AUTHORITY" WHEN (A) HE, SHE OR IT HAS NO RIGHT OR PERMISSION OF THE OWNER TO USE A COMPUTER OR (B) HE, SHE OR IT USES A COMPUTER OR COMPUTER NETWORK WITHOUT AUTHORITY AND 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 SUBSCRIBER.

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

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3. IT IS UNLAWFUL FOR ANY PERSON OR OTHER ENTITY TO SELL, GIVE OR OTHERWISE DISTRIBUTE OR POSSESS WITH THE INTENT TO SELL, GIVE OR DISTRIBUTE SOFTWARE WHICH (A) IS PRIMARILY DESIGNED OR PRODUCED FOR THE PURPOSE OF FACILITATING OR ENABLING THE FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION; (B) 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; OR (C) IS MARKETED BY THAT PERSON OR OTHER ENTITY OR ANOTHER ACTING IN CONCERT WITH THAT PERSON OR OTHER ENTITY WITH THAT PERSON'S OR OTHER ENTITY'S KNOWLEDGE FOR USE IN FACILITATING OR ENABLING THE FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION.

4. ANY PERSON OR OTHER ENTITY WHO VIOLATES THIS SECTION SHALL BE GUILTY OF COMPUTER TRESPASS, WHICH OFFENSE SHALL BE PUNISHABLE AS A MISDEMEANOR, IF THERE IS DAMAGE TO THE PROPERTY OF ANOTHER.

5. 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 SITUATE IN THE STATE TO PREVENT THE TRANSMISSION OF UNSOLICITED ELECTRONIC MAIL IN VIOLATION OF THIS SECTION.

6. ANY PERSON OR OTHER ENTITY WHOSE PROPERTY OR PERSON IS INJURED BY REASON OF A VIOLATION OF ANY PROVISION OF THIS SECTION MAY SUE THEREFOR AND RECOVER FOR ANY DAMAGES SUSTAINED AND THE COSTS OF SUIT. WITHOUT LIMITING THE GENERALITY OF THE TERM, "DAMAGES" SHALL INCLUDE LOSS OF PROFIT.

7. IF THE INJURY ARISES FROM THE TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL, THE INJURED PERSON OR OTHER ENTITY, OTHER THAN AN ELECTRONIC MAIL SERVICE PROVIDER, MAY ALSO RECOVER ATTORNEY'S FEES AND COSTS, AND MAY ELECT, IN LIEU OF ACTUAL DAMAGES, TO RECOVER THE LESSER OF TEN DOLLARS FOR EACH AND EVERY UNSOLICITED BULK MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS SECTION OR TWENTY-FIVE THOUSAND DOLLARS PER DAY. THE INJURED PERSON OR OTHER ENTITY SHALL NOT HAVE A CAUSE OF ACTION AGAINST AN ELECTRONIC MAIL SERVICE PROVIDER WHICH MERELY TRANSMITS THE UNSOLICITED BULK ELECTRONIC MAIL OVER ITS COMPUTER NETWORK. IF THE INJURY ARISES FROM THE TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL, AN INJURED ELECTRONIC MAIL SERVICE PROVIDER MAY ALSO RECOVER THE GREATER OF TEN DOLLARS FOR EACH AND EVERY UNSOLICITED BULK ELECTRONIC MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS SECTION OR TWENTY-FIVE THOUSAND DOLLARS PER DAY.

8. 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 OR OTHER ENTITY AND TO PROTECT ANY TRADE SECRETS OF ANY PARTY.

9. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT ANY PERSON'S OR OTHER ENTITY'S RIGHT TO PURSUE ANY ADDITIONAL CIVIL REMEDIES OTHERWISE ALLOWED BY LAW.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.