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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

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

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
MISLEADING ELECTRONIC MAIL

SECTION 1701. DEFINITIONS.
1702. MISLEADING ELECTRONIC MAIL; PROHIBITION.
1703. UNAUTHORIZED AND MISLEADING ELECTRONIC MAIL; PROHIBITION.
1704. VIOLATIONS AND DAMAGES.
1705. BLOCKING OF COMMERCIAL ELECTRONIC MAIL BY INTERACTIVE COMPUTER SERVICE; IMMUNITY FROM LIABILITY.

S 1701. DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "ASSIST THE TRANSMISSION" MEANS ACTIONS TAKEN BY A PERSON TO PROVIDE SUBSTANTIAL ASSISTANCE OR SUPPORT WHICH ENABLES ANY PERSON TO FORMULATE, COMPOSE, SEND, ORIGINATE, INITIATE OR TRANSMIT A COMMERCIAL ELECTRONIC MAIL MESSAGE WHEN THE PERSON PROVIDING THE ASSISTANCE KNOWS OR CONSCIOUSLY AVOIDS KNOWING THAT THE INITIATOR OF THE COMMERCIAL ELECTRONIC MAIL MESSAGE IS ENGAGED OR INTENDS TO ENGAGE, IN ANY PRACTICE THAT VIOLATES THE PROVISIONS OF THIS ARTICLE.

(B) "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE SENT FOR THE PURPOSE OF ADVERTISING OR PROMOTING MATERIAL FOR THE LEASE, SALE, RENTAL, GIFT OFFER OR OTHER DISPOSITION OF ANY REALTY,

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

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GOODS, SERVICES OR EXTENSION OF CREDIT. IT DOES NOT MEAN AN ELECTRONIC MAIL MESSAGE (1) TO WHICH AN INTERACTIVE COMPUTER SERVICE PROVIDER HAS ATTACHED AN ADVERTISEMENT IN EXCHANGE FOR FREE USE OF AN ELECTRONIC MAIL ACCOUNT, WHEN THE SENDER HAS AGREED TO SUCH AN ARRANGEMENT; (2) ADDRESSED TO A RECIPIENT WITH WHOM THE INITIATOR HAS AN EXISTING BUSINESS OR PERSONAL RELATIONSHIP; AND (3) SENT AT THE REQUEST OF OR WITH THE EXPRESS CONSENT OF THE RECIPIENT.

(C) "ELECTRONIC MAIL ADDRESS" MEANS A DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS, TO WHICH ELECTRONIC MAIL MAY BE SENT OR DELIVERED.

(D) "INITIATE THE TRANSMISSION" REFERS TO THE ACTION BY THE ORIGINAL SENDER OF AN ELECTRONIC MAIL MESSAGE, NOT TO THE ACTION BY ANY INTERVENING INTERACTIVE COMPUTER SERVICE THAT MAY HANDLE OR RETRANSMIT THE MESSAGE, UNLESS SUCH INTERVENING INTERACTIVE COMPUTER SERVICE ASSISTS IN THE TRANSMISSION OF AN ELECTRONIC MAIL MESSAGE WHEN IT KNOWS OR CONSCIOUSLY AVOIDS KNOWING THAT THE PERSON INITIATING THE TRANSMISSION IS ENGAGED, OR INTENDS TO ENGAGE, IN ANY ACT OR PRACTICE THAT VIOLATES THE PROVISIONS OF THIS ARTICLE.

(E) "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE, SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND SUCH SYSTEMS OPERATED OR SERVICES OFFERED BY LIBRARIES OR EDUCATIONAL INSTITUTIONS.

(F) "INTERNET DOMAIN NAME" REFERS TO A GLOBALLY UNIQUE, HIERARCHICAL REFERENCE TO AN INTERNET HOST OR SERVICE, ASSIGNED THROUGH CENTRALIZED INTERNET NAMING AUTHORITIES, COMPRISING A SERIES OF CHARACTER STRINGS SEPARATED BY PERIODS WITH THE RIGHT-MOST STRING SPECIFYING THE TOP OF THE HIERARCHY.

(G) "PERSON OR ENTITY" MEANS A PERSON, CORPORATION, PARTNERSHIP, COMPANY, LIMITED LIABILITY COMPANY, TRUST OR ASSOCIATION, OR ANY AGENT OR EMPLOYEE THEREOF.

S 1702. MISLEADING ELECTRONIC MAIL; PROHIBITION.

(A) NO PERSON SHALL INITIATE THE TRANSMISSION, CONSPIRE WITH ANOTHER TO INITIATE THE TRANSMISSION OR ASSIST 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; OR

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

(B) FOR THE PURPOSES OF THIS SECTION, A PERSON KNOWS THAT THE INTENDED RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL MESSAGE IS A RESIDENT OF THIS STATE IF THAT INFORMATION IS AVAILABLE, UPON REQUEST, FROM THE REGISTRANT OF THE INTERNET DOMAIN NAME CONTAINED IN THE RECIPIENT'S ELECTRONIC MAIL ADDRESS.

S 1703. UNAUTHORIZED AND MISLEADING ELECTRONIC MAIL; PROHIBITION.

(A) NO PERSON SHALL INITIATE THE TRANSMISSION OR CONSPIRE WITH ANOTHER PERSON TO INITIATE THE TRANSMISSION OF A COMMERCIAL ELECTRONIC MAIL MESSAGE THAT:

(1) USES A THIRD PARTY'S INTERNET DOMAIN NAME WITHOUT THE PERMISSION OF SUCH 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; OR

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

(B) NO PERSON SHALL ASSIST IN THE TRANSMISSION OF A COMMERCIAL ELECTRONIC MAIL MESSAGE WHEN THE PERSON PROVIDING THE ASSISTANCE KNOWS OR CONSCIOUSLY AVOIDS KNOWING THAT THE INITIATOR OF THE COMMERCIAL ELECTRONIC MAIL MESSAGE IS ENGAGED OR INTENDS TO ENGAGE IN ANY ACT OR PRACTICE THAT VIOLATES THE PROVISIONS OF THIS ARTICLE.

(C) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS CHAPTER, NO PERSON OR ENTITY SHALL INITIATE THE TRANSMISSION OR CONSPIRE TO INITIATE THE TRANSMISSION OF AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE UNLESS THAT PERSON OR ENTITY ESTABLISHES A TOLL-FREE TELEPHONE NUMBER OR VALID SENDER OPERATED RETURN E-MAIL ADDRESS THAT THE RECIPIENT OF THE UNSOLICITED DOCUMENTS MAY CALL OR E-MAIL TO NOTIFY THE SENDER NOT TO E-MAIL ANY FURTHER UNSOLICITED DOCUMENTS.

(D) ALL UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES SUBJECT TO THIS SECTION SHALL INCLUDE A STATEMENT INFORMING THE RECIPIENT OF THE TOLL-FREE TELEPHONE NUMBER THAT THE RECIPIENT MAY CALL OR A VALID RETURN ADDRESS TO WHICH THE RECIPIENT MAY WRITE BY POSTAL MAIL OR E-MAIL, AS THE CASE MAY BE, NOTIFYING THE SENDER NOT TO E-MAIL TO THE RECIPIENT ANY FURTHER UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES AT THE E-MAIL ADDRESS OR ADDRESSES SPECIFIED BY THE RECIPIENT. THE STATEMENT SHALL BE THE FIRST TEXT IN THE BODY OF THE MESSAGE AND SHALL BE OF THE SAME SIZE AS THE MAJORITY OF THE TEXT OF THE MESSAGE.

(E) UPON NOTIFICATION BY A RECIPIENT OF HIS OR HER REQUEST NOT TO RECEIVE ANY FURTHER UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES, NO PERSON OR ENTITY CONDUCTING BUSINESS IN THIS STATE SHALL E-MAIL OR CAUSE TO BE E-MAILED ANY COMMERCIAL ELECTRONIC MAIL MESSAGES TO THAT RECIPIENT.

(F) THIS SECTION SHALL APPLY WHEN THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES ARE DELIVERED TO A STATE RESIDENT VIA AN ELECTRONIC MAIL SERVICE PROVIDER'S SERVICE OR EQUIPMENT LOCATED IN THIS STATE.

(G) AS USED IN THIS SECTION, "TRANSMISSION" DOES NOT INCLUDE OR REFER TO THE TRANSMISSION OF ANY DOCUMENTS BY A TELECOMMUNICATIONS UTILITY OR INTERACTIVE COMPUTER SERVICE, TO THE EXTENT THAT THE TELECOMMUNICATIONS UTILITY OR INTERACTIVE COMPUTER SERVICE MERELY CARRIES THAT TRANSMISSION OVER ITS NETWORK.

(H) IN THE CASE OF E-MAIL THAT CONSISTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES, THE SUBJECT LINE OF EACH AND EVERY MESSAGE SHALL INCLUDE "ADV:" AS THE FIRST FOUR CHARACTERS. IF THESE MESSAGES CONTAIN INFORMATION THAT CONSISTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES THAT MAY ONLY BE VIEWED, PURCHASED, RENTED, LEASED OR HELD IN POSSESSION BY AN INDIVIDUAL EIGHTEEN YEARS OF AGE AND OLDER, THE SUBJECT LINE OF EACH AND EVERY MESSAGE SHALL INCLUDE "ADV:ADLT" AS THE FIRST EIGHT CHARACTERS.

(I) AN EMPLOYER WHO IS THE REGISTERED OWNER OF MORE THAN ONE E-MAIL ADDRESS MAY DIRECT A PERSON OR ENTITY CONDUCTING BUSINESS IN THIS STATE AND E-MAILING OR CAUSING TO BE E-MAILED UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES TO CEASE E-MAILING TO ALL OF SUCH EMPLOYER'S EMPLOYEES WHO MAY USE EMPLOYER-PROVIDED AND EMPLOYER-CONTROLLED E-MAIL ADDRESSES.

(J) THE APPLICABILITY OF THIS ARTICLE OR ANY PROVISION OF THIS ARTICLE SHALL BE SUSPENDED ON AND AFTER THE EFFECTIVE DATE OF FEDERAL LAW THAT PROHIBITS OR OTHERWISE CONCURRENTLY OR MORE STRINGENTLY REGULATES THE TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES IN THIS STATE FOR SO LONG AS SUCH FEDERAL LAW IS IN EFFECT.

S 1704. VIOLATIONS AND DAMAGES.

(A) DAMAGES RECOVERABLE BY A RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL MESSAGE SENT IN VIOLATION OF THIS ARTICLE ARE FIVE HUNDRED DOLLARS OR ACTUAL DAMAGES, WHICHEVER IS GREATER, PAYABLE BY THE INITIATOR.

(B) DAMAGES RECOVERABLE BY AN INTERACTIVE COMPUTER SERVICE RESULTING FROM A VIOLATION OF THIS ARTICLE ARE ONE THOUSAND DOLLARS OR ACTUAL DAMAGES, WHICHEVER IS GREATER, PAYABLE BY THE INITIATOR.

S 1705. BLOCKING OF COMMERCIAL ELECTRONIC MAIL BY INTERACTIVE COMPUTER SERVICE; IMMUNITY FROM LIABILITY.

(A) AN INTERACTIVE COMPUTER SERVICE MAY, UPON ITS OWN INITIATIVE, BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF ANY COMMERCIAL ELECTRONIC MAIL THAT IT REASONABLY BELIEVES IS OR WILL BE SENT IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE.

(B) NO INTERACTIVE COMPUTER SERVICE MAY BE HELD LIABLE FOR ANY ACTION VOLUNTARILY TAKEN, IN GOOD FAITH, TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF ANY COMMERCIAL ELECTRONIC MAIL WHICH IT REASONABLY BELIEVES IS BEING OR WILL BE SENT IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE.

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