

6529

I N S E N A T E

January 22, 2016

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. The business corporation law is amended by adding a new
2 article 18 to read as follows:

3 ARTICLE 18
4 UNAUTHORIZED AND
5 MISLEADING ELECTRONIC MAIL

6 SECTION 1801. DEFINITIONS.

7 1802. MISLEADING ELECTRONIC MAIL; PROHIBITION.

8 1803. VIOLATIONS AND DAMAGES.

9 S 1801. DEFINITIONS.

10 FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOW-
11 ING MEANINGS:

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

19 (B) "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL
20 MESSAGE SENT FOR THE PURPOSE OF ADVERTISING OR PROMOTING MATERIAL FOR
21 THE LEASE, SALE, RENTAL, GIFT OFFER OR OTHER DISPOSITION OF ANY REALTY,
22 GOODS, SERVICES OR EXTENSION OF CREDIT.

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

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

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

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

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

17 S 1802. MISLEADING ELECTRONIC MAIL; PROHIBITION.

18 (A) NO PERSON SHALL INITIATE THE TRANSMISSION, CONSPIRE WITH ANOTHER
19 TO INITIATE THE TRANSMISSION OR ASSIST THE TRANSMISSION OF A COMMERCIAL
20 ELECTRONIC MAIL MESSAGE FROM A COMPUTER LOCATED IN THIS STATE OR TO AN
21 ELECTRONIC MAIL ADDRESS THAT THE SENDER KNOWS OR HAS REASON TO KNOW IS
22 HELD BY A RESIDENT OF THIS STATE THAT:

23 (1) USES A THIRD PARTY'S INTERNET DOMAIN NAME WITHOUT PERMISSION OF
24 THE THIRD PARTY, OR OTHERWISE MISREPRESENTS OR OBSCURES ANY INFORMATION
25 IN IDENTIFYING THE POINT OF ORIGIN OR THE TRANSMISSION PATH OF A COMMER-
26 CIAL ELECTRONIC MAIL MESSAGE; OR

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

28 (B) FOR THE PURPOSES OF THIS SECTION, A PERSON KNOWS THAT THE INTENDED
29 RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL MESSAGE IS A RESIDENT OF THIS
30 STATE IF THAT INFORMATION IS AVAILABLE, UPON REQUEST, FROM THE REGIS-
31 TRANT OF THE INTERNET DOMAIN NAME CONTAINED IN THE RECIPIENT'S ELECTRON-
32 IC MAIL ADDRESS.

33 S 1803. VIOLATIONS AND DAMAGES.

34 DAMAGES RECOVERABLE BY A RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL
35 MESSAGE SENT IN VIOLATION OF THIS ARTICLE ARE ONE HUNDRED DOLLARS FOR
36 THE FIRST OFFENSE AND ONE THOUSAND DOLLARS FOR EACH SUBSEQUENT OFFENSE.

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