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

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:

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

ARTICLE 18
UNAUTHORIZED AND
MISLEADING ELECTRONIC MAIL

SECTION 1801. DEFINITIONS.
1802. MISLEADING ELECTRONIC MAIL; PROHIBITION.
1803. VIOLATIONS AND DAMAGES.

S 1801. 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, GOODS, SERVICES OR EXTENSION OF CREDIT.

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

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

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(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) "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.

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

S 1802. 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 1803. VIOLATIONS AND DAMAGES.

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

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