

ASSEMBLY BILL

No. 2950

Introduced by Assembly Member Huffman

February 22, 2008

An act relating to commercial e-mail messages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2950, as introduced, Huffman. Computers: false or deceptive commercial e-mail messages.

Existing state law prohibits a person or entity from advertising in a commercial e-mail advertisement that is sent either from California or to a California e-mail address if the e-mail contains or is accompanied by a 3rd party's domain name without permission, contains or is accompanied by falsified, misrepresented, or forged header information, or has a misleading subject line, and makes a violation of the prohibition a misdemeanor. Existing law authorizes the Attorney General, an e-mail service provider, or the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these provisions to bring an action to recover liquidated damages of \$1,000 per unsolicited commercial e-mail advertisement transmitted in violation of the provisions, up to \$1,000,000 per incident, subject to reduction by the court, as specified.

This bill would declare the intent of the Legislature to prohibit false and deceptive spam, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
- 3 (a) Prohibiting false and deceptive commercial e-mail is a matter
4 vitally affecting the public interest for the purpose of protecting
5 consumers and businesses in California. Falsity or deception in
6 commercial e-mail messages is not reasonable or necessary for
7 the development and preservation of commerce, is unconscionable,
8 and demands consumer protection.
- 9 (b) The economic harm and invasion of privacy resulting from
10 the transmission and receipt of false and deceptive commercial
11 e-mail constitutes a threat to the welfare of residents of California.
12 It is the intent of the Legislature that this act shall afford maximum
13 protection to consumer and business recipients of commercial
14 e-mail messages.
- 15 (c) Because there are limited resources for the Attorney General
16 to undertake action against out-of-state spammers, authorizing a
17 private right of action for recipients of unlawful spam is necessary
18 in order to protect consumers and further efforts to combat unlawful
19 spam.
- 20 (d) False and deceptive commercial e-mail costs California
21 residents more than one billion dollars (\$1,000,000,000) per year
22 as a result of the following:
- 23 (1) The need to acquire additional capacity for computer
24 systems.
- 25 (2) The need to acquire software programs to filter and control
26 false and deceptive commercial e-mail messages.
- 27 (3) The time and productivity lost when businesses and public
28 bodies must devote personnel resources to the following:
- 29 (A) Creating and maintaining e-mail message filters for users,
30 computers, networks, and e-mail service providers.
- 31 (B) Removing infestations of false and deceptive commercial
32 e-mail messages from computers, networks, and e-mail inboxes.
- 33 (C) Unclogging transmission paths.
- 34 (D) Repairing and restarting computer systems that have
35 experienced system failures resulting from false and deceptive
36 commercial e-mail messages.
- 37 (E) Disruptions of legitimate e-mail communications and
38 abandonment of e-mail addresses.

1 (e) Federal and state laws have proven inadequate to prevent
2 the harm to the public welfare that results from the transmission
3 and receipt of false and deceptive commercial e-mail messages.

4 (f) Existing federal law has preempted the regulation of truthful
5 and nondeceptive commercial e-mail advertisements.
6 Consequently, the Legislature only seeks to regulate false and
7 deceptive commercial e-mail advertisements, until such time as
8 federal law is amended.

9 (g) At the present time, over 90 percent of all e-mail traffic in
10 the United States is comprised of unsolicited commercial e-mail
11 advertisements (spam), including false and deceptive spam.

12 (h) The increase in spam is not only an annoyance but is also
13 an increasing drain on corporate budgets and possibly a threat to
14 the continued usefulness of the most successful tool of the
15 computer age.

16 (i) Complaints from irate businesses and home-computer users
17 regarding spam have skyrocketed, and polls have reported that 74
18 percent of respondents favor making mass spamming illegal and
19 only 12 percent are opposed, and that 80 percent of respondents
20 consider spam very annoying.

21 (j) According to Ferris Research Incorporated, a San Francisco
22 consulting group, in 2005, spam cost United States organizations
23 more than seventeen billion dollars (\$17,000,000,000), including
24 lost productivity and the additional equipment, software, and
25 manpower needed to combat the problem. California represents
26 12 percent of the United States population with an emphasis on
27 technology business and it is, therefore, estimated that spam,
28 including false and deceptive spam, cost California organizations
29 well over two billion dollars (\$2,000,000,000).

30 (k) Like junk fax, false and deceptive spam imposes a cost on
31 users, using up valuable storage space in e-mail inboxes, as well
32 as costly computer bandwidth, and on networks and the computer
33 servers that power them, and discourages people from using e-mail.

34 (l) Spam filters have not proven effective because they are
35 subject to spammers' ever-changing attempts at circumvention.

36 (m) Like traditional paper "junk" mail, spam can be annoying
37 and waste time, but spam causes many additional problems because
38 it is easy and virtually free to create, but difficult and costly to
39 eliminate.

1 (n) The “cost shifting” from deceptive spammers to Internet
2 businesses and e-mail users has been likened to sending junk mail
3 with postage due or making telemarketing calls to someone’s
4 pay-per-minute cellular phone.

5 (o) Many spammers have become so adept at masking their
6 tracks that they are rarely found, often due to return addresses that
7 show up on the display as “unknown,” are fake, or are located
8 outside of the United States. Spammers are technologically
9 sophisticated and they can adjust their systems to counter special
10 filters and other barriers against spam and can electronically
11 commandeer unprotected computers, turning them into
12 spam-launching weapons of mass production. At present, more
13 than 80 percent of spam is sent through compromised computers,
14 known as “zombie” machines.

15 (p) There is a need to regulate the advertisers who promote their
16 products and services through false or deceptive spam, as well as
17 the actual senders of false or deceptive spam, because the
18 advertisers are the ultimate beneficiaries of that spam and because
19 spammers who actually “hit the send key” can be impossible to
20 track down and are often outside of California or outside of the
21 United States.

22 (q) A significant amount of spam, including false and deceptive
23 spam, is sent by affiliates or subaffiliates who act as marketing
24 agents for the advertisers, through advertising networks that act
25 as middlemen to connect advertisers with spammers, or through
26 third-party e-mailing services. These advertising networks and
27 e-mailing services also have a financial stake in any transactions
28 resulting from this spam.

29 (r) In addition, false and deceptive spam is responsible for virus
30 proliferation that can cause tremendous damage both to individual
31 computers and to business systems.

32 (s) It is not necessary that recipients attempt to opt out of spam.
33 Indeed, to attempt to do so is often ineffectual and often results in
34 being a direct method of placing one’s e-mail address on even
35 more spammers’ lists. E-mail service providers and the California
36 Attorney General advise consumers not to attempt to opt out of
37 spam lists. Furthermore, clicking on an “opt-out” line can place
38 the recipient’s computer at high risk of being compromised or
39 infected with malicious software.

- 1 (t) Many, if not most, e-mail users have been forced to use spam
2 filters to automatically sort and delete e-mails so that the user does
3 not have to open or read spams unless they specifically desire to.
4 However, these spam filters have not proven to be 100 percent
5 effective, as spammers continually find new ways to bypass or
6 defeat the spam filters, and sometimes the filters miscategorize
7 solicited e-mail as spam.
- 8 (u) Because of the above problems, it is the intent of the
9 Legislature to prohibit false and deceptive spam.

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