

1 AMENDMENT TO HOUSE BILL 3017

2 AMENDMENT NO. _____. Amend House Bill 3017 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Unsolicited Commercial Electronic Mail Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Illinois electronic mail address" means any of the
8 following:

9 (1) An electronic mail address furnished by an
10 electronic mail service provider that sends bills for
11 furnishing and maintaining that electronic mail address
12 to a mailing address in this State.

13 (2) An electronic mail address ordinarily accessed
14 from a computer located in this State.

15 (3) An electronic mail address furnished to a
16 resident of this state.

17 (b) "Commercial electronic mail advertisement" means any
18 electronic mail message initiated for the purpose of
19 advertising or promoting the lease, sale, rental, gift offer,
20 or other disposition of any property, goods, services, or
21 extension of credit.

22 (c) "Direct consent" means a recipient's unambiguous

1 expression of permission to receive a commercial electronic
2 mail advertisement of the type transmitted, where the
3 recipient has clear and conspicuous notice of the scope of
4 the permission, including the types of commercial electronic
5 mail advertisements and the senders or types of senders
6 included, at the time the recipient grants that permission.

7 (d) "Domain name" means any alphanumeric designation
8 that is registered with or assigned by any domain name
9 registrar as part of an electronic address on the Internet.

10 (e) "Electronic mail" means an electronic message that
11 is transmitted between 2 or more telecommunications devices,
12 computers, or electronic devices capable of receiving
13 electronic messages, whether or not the message is converted
14 to hard copy format after receipt or is viewed upon
15 transmission or stored for later retrieval. "Electronic mail"
16 includes electronic messages that are transmitted through a
17 local, regional, or global computer network.

18 (f) "Electronic mail address" means a destination,
19 commonly expressed as a string of characters, to which
20 electronic mail can be sent or delivered. An "electronic mail
21 address" may include a user name or mailbox and a reference
22 to an Internet domain.

23 (g) "Electronic mail service provider" means any person,
24 including an Internet service provider, that is an
25 intermediary in sending or receiving electronic mail or that
26 provides to end users of the electronic mail service the
27 ability to send or receive electronic mail.

28 (h) "Functioning return electronic mail address" means
29 an electronic mail address displayed in a commercial
30 electronic mail advertisement that has the capacity to
31 receive the number of reply messages that the sender of the
32 commercial electronic mail advertisement should reasonably
33 expect to be transmitted by the recipients of the commercial
34 electronic mail advertisement for no less than 30 days after

1 the sending of the commercial electronic mail advertisement.

2 (i) "Header information" means the source, destination,
3 and routing information attached to the beginning of an
4 electronic mail message, including the originating domain
5 name and originating electronic mail address.

6 (j) "Initiate the transmission of a commercial
7 electronic mail advertisement" means to transmit or cause to
8 be transmitted a commercial electronic mail advertisement or
9 assist in the transmission of a commercial electronic mail
10 advertisement by providing or selecting electronic mail
11 addresses to which the advertisement may be sent, but does
12 not include the transmission of the advertisement through the
13 network or system of a telecommunications utility or an
14 electronic mail service provider.

15 (k) "Internet" means the global information system that
16 is logically linked together by a globally unique address
17 space based on the Internet Protocol (IP), or its subsequent
18 extensions, and that is able to support communications using
19 the Transmission Control Protocol/Internet Protocol (TCP/IP)
20 suite, or its subsequent extensions, or other IP-compatible
21 protocols, and that provides, uses, or makes accessible,
22 either publicly or privately, high level services layered on
23 the communications and related infrastructure.

24 (l) "Preexisting or current business relationship," as
25 used in connection with the sending of a commercial
26 electronic mail advertisement, means either of the following:

27 (1) The recipient has purchased or leased property,
28 goods, or services from the sender and both of the
29 following conditions are met:

30 (A) The subject of the commercial electronic
31 mail advertisement concerns that purchase or lease.

32 (B) The commercial electronic mail
33 advertisement is sent within 12 months of the
34 purchase or lease or within any longer express

1 warranty period.

2 (2) The recipient has an ongoing contract with the
3 sender and the commercial electronic mail advertisement
4 directly concerns the ongoing contract.

5 (m) "Recipient" means the addressee of a commercial
6 electronic mail advertisement. If an addressee of a
7 commercial electronic mail advertisement has one or more
8 electronic mail addresses to which a commercial electronic
9 mail advertisement is sent, the addressee shall be deemed to
10 be a separate recipient for each address to which the
11 advertisement is sent.

12 (n) "Sender" means a person who initiates a commercial
13 electronic mail advertisement.

14 (o) "Unsolicited commercial electronic mail
15 advertisement" means a commercial electronic mail
16 advertisement sent to a recipient who meets both of the
17 following criteria:

18 (1) Has not provided direct consent to receive the
19 commercial electronic mail advertisement.

20 (2) Does not have a preexisting or current business
21 relationship with the sender or offeror of the property,
22 goods, or services.

23 Section 10. Unsolicited commercial electronic mail;
24 requirements.

25 (a) Any sender of unsolicited commercial electronic mail
26 advertisements either from Illinois or to an Illinois
27 electronic mail address shall do all of the following:

28 (1) Maintain a functioning return electronic mail
29 address to which a recipient may send a reply indicating
30 the recipient's desire not to receive further commercial
31 electronic mail advertisements from the sender at the
32 electronic mail address at which the message was
33 received.

1 (2) Clearly and conspicuously disclose in the
2 commercial electronic mail advertisement all of the
3 following:

4 (A) The recipient's right to decline to
5 receive further commercial electronic mail
6 advertisements at the electronic mail address at
7 which the message was received.

8 (B) The recipient's ability to decline to
9 receive further commercial electronic mail
10 advertisements by sending a message to the sender's
11 functioning return electronic mail address.

12 (C) The sender's functioning return electronic
13 mail address.

14 (b) It is unlawful for any person to initiate the
15 transmission of an unsolicited commercial electronic mail
16 advertisement either from Illinois or to an Illinois
17 electronic mail address under any of the following
18 circumstances:

19 (1) The commercial electronic mail advertisement
20 contains or is accompanied by a third party's domain name
21 without permission of the third party.

22 (2) The commercial electronic mail advertisement
23 contains or is accompanied by falsified, misrepresented,
24 obscured, or forged header information.

25 (3) The commercial electronic mail advertisement
26 has a subject line that has the capacity or tendency to
27 mislead the public about the contents of the
28 advertisement.

29 (4) The sender is in violation of subdivision (a)
30 or the commercial electronic mail advertisement does not
31 contain the notice required by subdivision (a).

32 (5) The potential recipient of the commercial
33 electronic mail advertisement or a recipient of a past
34 commercial electronic mail advertisement has informed the

1 sender, by use of the functioning return electronic mail
2 address or by other electronic or written means
3 communicated to the sender, that the recipient does not
4 wish to receive commercial electronic mail advertisements
5 at that electronic mail address.

6 (6) An employer has informed the sender, as
7 provided in subdivision (c), not to send further
8 commercial electronic mail advertisements to designated
9 electronic mail addresses.

10 (c) An employer who provides or has control over one or
11 more electronic mail addresses used by its employees may
12 notify the sender of an unsolicited commercial electronic
13 mail advertisement, by use of the functioning return
14 electronic mail address or by other electronic or written
15 means communicated to the sender, that no further commercial
16 electronic mail advertisements should be transmitted to any
17 of the employer-provided and employer-controlled electronic
18 mail addresses.

19 (d) In addition to the prohibitions described in
20 subdivision (b), it is unlawful for any person to initiate
21 the transmission of an unsolicited commercial electronic mail
22 advertisement from Illinois or to an Illinois electronic mail
23 address unless all of the following conditions are satisfied:

24 (1) The subject line of the commercial electronic
25 mail advertisement includes "ADV:" as the first 4
26 characters.

27 (2) If the commercial electronic mail advertisement
28 is intended for the purpose of the lease, sale, rental,
29 gift offer, or other disposition of any property, goods,
30 services, or extension of credit that may only be viewed,
31 purchased, rented, leased, or held in possession by an
32 individual 18 years of age or older, the subject line of
33 the commercial electronic mail advertisement shall
34 include "ADV:ADLT" as the first eight characters.

1 Section 15. Unsolicited commercial electronic mail;
2 transmission. It is unlawful for any person to sell or
3 otherwise provide a list of electronic mail addresses to be
4 used to do either of the following:

5 (1) Initiate the transmission of unsolicited
6 commercial electronic mail advertisements from Illinois.

7 (2) Initiate the transmission of unsolicited
8 electronic mail advertisements to an Illinois electronic
9 mail address.

10 Section 20. Remedies.

11 (a) In addition to any other remedies provided by this
12 Act or by other provisions of law, a recipient of a
13 commercial electronic mail advertisement transmitted in
14 violation of Section 10 or 15 may bring an action to recover
15 either actual damages or \$500 for each individual violation,
16 whichever is greater, and may also recover reasonable costs
17 and attorney's fees.

18 (b) If the court finds that the violation was willful or
19 knowing, the court may, in its discretion, increase the
20 amount of the award to an amount equal to not more than 3
21 times the amount available under subsection (a).

22 Section 25. Criminal penalty. Violation of this Act is a
23 Class C misdemeanor.

24 Section 30. Consumer Fraud and Deceptive Business
25 Practices Act. In addition to any other penalties specified
26 in this Act, violation of this Act constitutes an unlawful
27 practice under the Consumer Fraud and Deceptive Business
28 Practices Act.

29 Section 35. Other remedies. The remedies provided for in
30 this Act are in addition to, and not in lieu of, any other

1 remedies provided for by law.

2 Section 85. The Consumer Fraud and Deceptive Business
3 Practices Act is amended by changing Section 2Z as follows:

4 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

5 Sec. 2Z. Violations of other Acts. Any person who
6 knowingly violates the Automotive Repair Act, the Home Repair
7 and Remodeling Act, the Dance Studio Act, the Physical
8 Fitness Services Act, the Hearing Instrument Consumer
9 Protection Act, the Illinois Union Label Act, the Job
10 Referral and Job Listing Services Consumer Protection Act,
11 the Travel Promotion Consumer Protection Act, the Credit
12 Services Organizations Act, the Automatic Telephone Dialers
13 Act, the Pay-Per-Call Services Consumer Protection Act, the
14 Telephone Solicitations Act, the Illinois Funeral or Burial
15 Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed
16 Act, the Pre-Need Cemetery Sales Act, subsection (a) or (b)
17 of Section 3-10 of the Cigarette Tax Act, subsection (a) or
18 (b) of Section 3-10 of the Cigarette Use Tax Act, the
19 Unsolicited Commercial Electronic Mail Act, or paragraph (6)
20 of subsection (k) of Section 6-305 of the Illinois Vehicle
21 Code commits an unlawful practice within the meaning of this
22 Act.

23 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
24 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.
25 1-1-02.)

26 (815 ILCS 511/Act rep.)

27 Section 90. Repeal. The Electronic Mail Act is repealed.

28 Section 95. Prior cause of action. Any cause of action
29 that is in existence before the effective date of this Act
30 shall not be affected by this Act, but shall instead be

1 governed by the law that was in effect at the time the cause
2 of action arose.".