

BUSINESS AND COMMERCE CODE
TITLE 10. USE OF TELECOMMUNICATIONS
SUBTITLE B. ELECTRONIC COMMUNICATIONS
CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Commercial electronic mail message" means an electronic mail message that advertises, offers for sale or lease, or promotes any goods, services, business opportunity, property, or other article, commodity, or thing of value.

(2) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.

(3) "Electronic mail service provider" means a person who:

(A) is authorized to transact business in this state;

(B) is an intermediary in transmitting or receiving electronic mail; and

(C) provides to an end user of an electronic mail service the ability to transmit or receive electronic mail.

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and another person, regardless of whether consideration is exchanged;

(B) pertains to a product or service offered by one of the persons; and

(C) has not been terminated by either person.

(5) "Obscene" has the meaning assigned by Section [43.21](#), Penal Code.

(6) "Sender" means a person who initiates an

electronic mail message.

(7) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(8) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient by a person with whom the recipient does not have an established business relationship. The term does not include electronic mail transmitted by an organization using electronic mail to communicate exclusively with members, employees, or contractors of the organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES PROHIBITED. (a) In this section, "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service that is:

(1) assigned through a centralized Internet naming authority; and

(2) composed of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(b) A person may not intentionally transmit a commercial electronic mail message that:

(1) is an unsolicited commercial electronic mail message and falsifies the electronic mail transmission or routing information;

(2) contains false, deceptive, or misleading information in the subject line; or

(3) uses another person's Internet domain name without the other person's consent.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF UNSOLICITED

COMMERCIAL ELECTRONIC MAIL MESSAGES. (a) A person may not intentionally take an action to transmit an unsolicited commercial electronic mail message unless:

(1) "ADV:" appears first in the subject line of the message or, if the message contains obscene material or material depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" appears first in the subject line; and

(2) the sender or a person acting on behalf of the sender provides a functioning return electronic mail address to which a recipient of the message may, at no cost to the recipient, send a reply requesting the removal of the recipient's electronic mail address from the sender's electronic mail list.

(b) A sender shall remove a person's electronic mail address from the sender's electronic mail list not later than the third day after the date the sender receives a request for removal of that address under Subsection (a)(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC MAIL ADDRESSES PROHIBITED. A sender or a person acting on behalf of a sender may not sell or otherwise provide to another the electronic mail address of a person who requests the removal of that address from the sender's electronic mail list as provided by Section 321.052(a)(2), except as required by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. ENFORCEMENT

Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING OBSCENE MATERIAL OR MATERIAL DEPICTING SEXUAL CONDUCT; CRIMINAL PENALTY.

(a) A person commits an offense if the person intentionally takes an action to transmit a message that contains obscene material or material depicting sexual conduct in violation of Section 321.052(a)(1).

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL PENALTY AND INJUNCTIVE RELIEF. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed the lesser of:

(1) \$10 for each unlawful message or unlawful action; or

(2) \$25,000 for each day an unlawful message is received or each day an unlawful action is taken.

(b) The attorney general or a prosecuting attorney in the county in which the violation occurs may:

(1) bring an action to recover the civil penalty; and

(2) obtain an injunction to prevent or restrain a violation of this chapter.

(c) The attorney general or prosecuting attorney may recover reasonable expenses incurred in recovering the civil penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(d) Subsection (a) does not apply to a violation of Section [321.107\(a\)](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter [17](#), and any public or private right or remedy prescribed by that subchapter may be used to enforce this chapter, except as provided by Section [321.109](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR DAMAGES. (a) A person injured by a violation of this chapter may bring an action to recover:

(1) actual damages, including lost profits; or
(2) an amount described by Section [321.105](#) or [321.106](#),
as applicable.

(b) A person who prevails in the action is entitled to recover reasonable attorney's fees and court costs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER THAN ELECTRONIC MAIL SERVICE PROVIDERS. (a) In lieu of actual damages, a person injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the lesser of:

(1) \$10 for each unlawful message; or
(2) \$25,000 for each day the unlawful message is received.

(b) Subsection (a) does not apply to a person who is an electronic mail service provider.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL SERVICE PROVIDERS. In lieu of actual damages, an electronic mail service provider injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the greater of:

(1) \$10 for each unlawful message; or
(2) \$25,000 for each day the unlawful message is received.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO ATTORNEY GENERAL; CIVIL PENALTY. (a) A person who brings an action under Section [321.104](#) shall notify the attorney general of the action by mailing a copy of the petition by registered or certified mail not later than the 30th day after the date the petition is filed and at

least 10 days before the date set for a hearing on the action.

(b) A person who violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed \$200 for each violation. The attorney general may bring an action to recover the civil penalty in the court in which the action under Section 321.104 was brought.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY GENERAL. The attorney general may intervene in an action brought under Section 321.104 by:

(1) filing a notice of intervention with the court in which the action is pending; and

(2) serving each party to the action with a copy of the notice of intervention.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED. A court may not certify an action brought under this chapter as a class action.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.110. PROTECTION OF SECRECY OR SECURITY. At the request of a party to an action brought under this chapter, the court, in the court's discretion, may conduct a legal proceeding in a manner that protects:

(1) the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved so as to prevent a possible recurrence of the same or a similar act by another person; or

(2) any trade secret of a party to the action.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED BY ERROR OR ACCIDENT. A person may not be held liable under this chapter for a commercial electronic mail message that is transmitted as a result of an error or accident.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.112. IMMUNITY FROM LIABILITY: TELECOMMUNICATIONS UTILITIES AND ELECTRONIC MAIL SERVICE PROVIDERS. (a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code.

(b) A telecommunications utility or an electronic mail service provider may not be held liable under Section 321.051 or 321.052 and is not subject to a penalty provided by this chapter.

(c) A person injured by a violation of this chapter does not have a cause of action against a telecommunications utility or an electronic mail service provider under this chapter solely because the utility or service provider:

(1) is an intermediary between the sender, or a person acting on behalf of the sender, and the recipient in the transmission of electronic mail that violates this chapter;

(2) provides transmission, routing, relaying, handling, or storing, through an automatic technical process, of an unsolicited commercial electronic mail message through the utility's or service provider's computer network or facilities; or

(3) provides telecommunications services, information services, or other services used in the transmission of an electronic mail message that violates this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF SENDERS. A sender may not be held liable for the transmission of an electronic mail message that violates this chapter if the sender:

(1) contracts in good faith with an electronic mail service provider to transmit electronic mail messages for the

sender; and

(2) has no reason to believe the electronic mail service provider will transmit any of the sender's electronic mail messages in violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES; QUALIFIED IMMUNITY. (a) An electronic mail service provider may on its own initiative block the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter, if the service provider:

(1) provides a process for the prompt, good faith resolution of a dispute related to the blocking with the sender of the commercial electronic mail message; and

(2) makes contact information for the resolution of the dispute accessible to the public on the service provider's Internet website.

(b) An electronic mail service provider who complies with Subsection (a) may not be held liable for blocking the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.