
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 246 Session of
2019

INTRODUCED BY KENYATTA, JANUARY 28, 2019

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 28, 2019

AN ACT

1 Regulating electronic mail solicitations; protecting privacy of
2 Internet consumers; regulating use of data about Internet
3 users; and prescribing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Internet
10 Privacy and Consumer Protection Act (IPCPA).

11 Section 102. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Consumer." A person who agrees to pay a fee to an Internet
16 service provider for access to the Internet for personal, family
17 or household purposes and who does not resell access.

18 "Internet service provider." A business or person who
19 provides consumers authenticated access to, or presence on, the

1 Internet by means of a switched or dedicated telecommunications
2 channel upon which the business or person provides transit
3 routing of Internet Protocol (IP) packets for and on behalf of
4 consumers. The term does not include the offering, on a common
5 carrier basis, of telecommunications facilities or of
6 telecommunications by means of those facilities.

7 "Ordinary course of business." Debt collection activities,
8 order fulfillment, request processing or the transfer of
9 ownership.

10 "Personally identifiable information." Information that
11 identifies:

12 (1) a consumer by physical or electronic address or
13 telephone number;

14 (2) a consumer as having requested or obtained specific
15 materials or services from an Internet service provider;

16 (3) Internet or online sites visited by a consumer; or

17 (4) the contents of a consumer's data storage devices.

18 CHAPTER 3

19 DISCLOSURE OF PERSONAL INFORMATION

20 Section 301. When disclosure of personal information
21 prohibited.

22 Except as provided in sections 302 and 303, no Internet
23 service provider may knowingly disclose personally identifiable
24 information concerning a consumer of the Internet service
25 provider.

26 Section 302. When disclosure of personal information required.

27 An Internet service provider shall disclose personally
28 identifiable information concerning a consumer:

29 (1) to an investigative or law enforcement officer while
30 acting as authorized by law;

1 (2) pursuant to a court order in a civil proceeding upon
2 a showing of compelling need for the information that cannot
3 be accommodated by other means;

4 (3) to a court in a civil action commenced by the
5 Internet service provider to enforce collection of unpaid
6 subscription fees or purchase amounts, and then only to the
7 extent necessary to establish the fact of the subscription
8 delinquency or purchase agreement, and with appropriate
9 safeguards against unauthorized disclosure;

10 (4) to the consumer who is the subject of the
11 information, upon written or electronic request and upon
12 payment of a fee not to exceed the actual cost of retrieving
13 the information; or

14 (5) pursuant to subpoena, including an administrative
15 subpoena, issued under authority of a law of this State or
16 another state or the United States.

17 Section 303. When disclosure of personal information permitted.

18 (a) Conditions of disclosure.--An Internet service provider
19 may disclose personally identifiable information concerning a
20 consumer to:

21 (1) a person if the disclosure is incident to the
22 ordinary course of business of the Internet service provider;

23 (2) another Internet service provider for purposes of
24 reporting or preventing violations of the published
25 acceptable use policy or consumer service agreement of the
26 Internet service provider, except that the recipient may
27 further disclose the personally identifiable information only
28 as provided by this act; or

29 (3) a person with the authorization of the consumer.

30 (b) Authorization.--

1 (1) An Internet service provider may obtain a consumer's
2 authorization of the disclosure of personally identifiable
3 information in writing or by electronic means. The request
4 for authorization must reasonably describe the type of person
5 to whom personally identifiable information may be disclosed
6 and the anticipated uses of the information.

7 (2) In order for an authorization to be effective, a
8 contract between an Internet service provider and the
9 consumer must state either that the authorization will be
10 obtained by an affirmative act of the consumer or that
11 failure of the consumer to object after the request has been
12 made constitutes authorization of disclosure. The provision
13 in the contract must be conspicuous.

14 (3) Authorization may be obtained in a manner consistent
15 with self-regulating guidelines issued by representatives of
16 the Internet service provider or online industry or in any
17 other manner reasonably designed to comply with this act.

18 (4) The authorization must be written in plain language
19 that can easily be understood by consumers.

20 Section 304. Security of information.

21 An Internet service provider shall take reasonable steps to
22 maintain security and privacy of a consumer's personally
23 identifiable information.

24 Section 305. Exclusion from evidence.

25 Except for purposes of establishing a violation of this act,
26 personally identifiable information obtained in a manner other
27 than as provided in this act may not be admitted as evidence in
28 a civil action.

29 Section 306. Enforcement.

30 (a) General rule.--A consumer who prevails or substantially

1 prevails in an action brought under this act shall be entitled
2 to recover to the greater of \$500 or actual damages. Costs,
3 disbursements and reasonable attorney fees may be awarded to a
4 party awarded damages for a violation of this act.

5 (b) Defense.--In an action under this act, it is a defense
6 that the defendant has established and implemented reasonable
7 practices and procedures to prevent violations of this act.

8 Section 307. Construction.

9 Nothing in this chapter may be construed to limit any greater
10 protection of the privacy of information under other law, except
11 that:

12 (1) nothing in this act may limit the authority under
13 other Federal or State law of law enforcement or prosecuting
14 authorities to obtain information; and

15 (2) if Federal law is enacted that regulates the release
16 of personally identifiable information by Internet service
17 providers, but does not preempt State law on the subject, the
18 Federal law supersedes any conflicting provisions of this
19 act.

20 CHAPTER 5

21 RECORDS

22 Section 501. Records concerning electronic communication
23 service or remote computing service.

24 (a) General rule.--Except as provided in subsection (b), a
25 provider of electronic communication service or remote computing
26 service may disclose a record or other information pertaining to
27 a subscriber to or customer of the service to any person other
28 than a governmental entity.

29 (b) Exception.--A provider of electronic communication
30 service or remote computing service may disclose a record or

1 other information pertaining to a subscriber to or customer of
2 the service to a governmental entity only when the governmental
3 entity:

- 4 (1) uses an administrative subpoena authorized by
5 statute;
- 6 (2) obtains a warrant;
- 7 (3) obtains a court order for the disclosure under this
8 act; or
- 9 (4) has the consent of the subscriber or customer to the
10 disclosure.

11 (c) Governmental entities.--A governmental entity receiving
12 records or information under this section need not provide
13 notice to a subscriber or customer.

14 CHAPTER 7

15 COMMERCIAL ELECTRONIC MAIL SOLICITATION

16 Section 701. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Commercial electronic mail message." An electronic mail
21 message sent through an Internet service provider's facilities
22 located in this Commonwealth to a resident of this Commonwealth
23 for promoting real property, goods or services for sale or
24 lease.

25 "Electronic mail address." A destination, commonly expressed
26 as a string of characters, to which electronic mail may be sent
27 or delivered.

28 "Electronic mail service provider." A business, nonprofit
29 organization, educational institution, library or governmental
30 entity that provides a set of users the ability to send or

1 receive electronic mail messages through the Internet.

2 "Initiate the transmission." In relation to the action by
3 the original sender of an electronic mail message, not to the
4 action by an intervening Internet service provider or electronic
5 mail service provider that may handle or retransmit the message.

6 "Internet domain name." A globally unique, hierarchical
7 reference to an Internet host or service, assigned through
8 centralized Internet naming authorities, comprising a series of
9 character strings separated by periods with the rightmost string
10 specifying the top of the hierarchy.

11 Section 702. False or misleading messages prohibited.

12 No person may initiate the transmission of a commercial
13 electronic mail message that:

14 (1) uses a third party's Internet domain name without
15 permission of the third party or otherwise misrepresents
16 information in identifying the point of origin or the
17 transmission path of a commercial electronic mail message; or

18 (2) contains false or misleading information in the
19 subject line.

20 Section 703. Subject disclosure.

21 (a) General rule.--The subject line of a commercial
22 electronic mail message shall include "ADV" as the first
23 characters. If the message contains information that consists of
24 material of a sexual nature that may only be viewed by an
25 individual 18 years of age and older, the subject line of the
26 message must include "ADV-ADULT" as the first characters.

27 (b) Definitions.--As used in this section, the following
28 words and phrases shall have the meanings given to them in this
29 subsection unless the context clearly indicates otherwise:

30 "Affiliate." A person that directly or indirectly controls,

1 is controlled by or is under common control with a specified
2 person.

3 "Business relationship." A prior or existing relationship
4 formed between the initiator and the recipient of a commercial
5 electronic mail message with or without an exchange of
6 consideration, on the basis of an inquiry, application, purchase
7 or use by the recipient of or regarding products, information or
8 services offered by the initiator or an affiliate or agent of
9 the initiator.

10 "Commercial electronic mail message." Does not include a
11 message:

12 (1) if the recipient of the message has consented to
13 receive or has solicited electronic mail messages from the
14 initiator of the message;

15 (2) from an organization using electronic mail to
16 communicate exclusively with its members;

17 (3) from an entity that uses electronic mail to
18 communicate exclusively with its employees or contractors; or

19 (4) if there is a business or personal relationship
20 between the initiator and the recipient.

21 Section 704. Toll-free number.

22 (a) Duty of sender to establish.--

23 (1) A sender initiating the transmission of a commercial
24 electronic mail message shall establish a toll-free telephone
25 number, a valid sender-operated return electronic mail
26 address or another easy-to-use electronic method that the
27 recipient of the commercial electronic mail message may call
28 or access by electronic mail or other electronic means to
29 notify the sender not to transmit by electronic mail any
30 further unsolicited commercial electronic mail messages.

1 (2) The notification process may include the ability for
2 the commercial electronic mail message recipient to direct
3 the initiator to transmit or not to transmit particular
4 commercial electronic mail messages based upon products,
5 services, divisions, organizations, companies or other
6 selections of the recipient's choice.

7 (b) Statement required.--A commercial electronic mail
8 message shall include a statement informing the recipient of a
9 toll-free telephone number the recipient may call or a valid
10 return address to which the recipient may write or access by
11 electronic mail or another electronic method established by the
12 initiator:

13 (1) notifying the sender not to transmit to the
14 recipient any further unsolicited commercial electronic mail
15 messages to the electronic mail address or addresses
16 specified by the recipient; and

17 (2) explaining the manner in which the recipient may
18 specify what commercial electronic mail messages the
19 recipient does and does not wish to receive.

20 Section 705. Blocking receipt or transmission.

21 No electronic mail service provider may be held liable in an
22 action by a recipient for an act voluntarily taken in good faith
23 to block the receipt or transmission through its service of a
24 commercial electronic mail message that the electronic mail
25 service provider reasonably believes is, or will be, sent in
26 violation of this chapter.

27 Section 706. Defenses.

28 A person is not liable for a commercial electronic mail
29 message sent in violation of this chapter if the person can show
30 by a preponderance of evidence that:

1 (1) the commercial electronic mail message was not
2 initiated by the person or was initiated in a manner and form
3 not subject to the control of the person; or

4 (2) the person has established and implemented
5 reasonable practices and procedures to prevent a violation of
6 this chapter.

7 Section 707. Damages.

8 (a) General rule.--A person injured by a violation of this
9 chapter may recover damages caused by the violation as specified
10 in this section.

11 (b) Recovery permitted.--An injured person, other than an
12 electronic mail service provider, may recover:

13 (1) the lesser of \$25 for each commercial electronic
14 mail message received that violates section 702 or \$35,000
15 per day; or

16 (2) the lesser of \$10 for each commercial electronic
17 mail message received that violates section 703 or \$25,000
18 per day.

19 (c) Election or recovery.--An injured electronic mail
20 service provider may recover actual damages or elect, in lieu of
21 actual damages, to recover:

22 (1) the lesser of \$25 for each commercial electronic
23 mail message received that violates section 702 or \$35,000
24 per day; or

25 (2) the lesser of \$10 for each commercial electronic
26 mail message received that violates section 703 or \$25,000
27 per day.

28 (d) Discretion of court.--At the request of any party to an
29 action brought under this section, the court may, at its
30 discretion, conduct all legal proceedings in such a way as to

1 protect the secrecy and security of the computer, computer
2 network, computer data, computer program and computer software
3 involved in order to prevent possible recurrence of the same or
4 similar act by another person and to protect trade secrets of a
5 party.

6 (e) Costs and fees.--Costs and reasonable attorney fees may
7 be awarded to a party awarded damages for a violation of this
8 chapter.

9 CHAPTER 9

10 MISCELLANEOUS PROVISIONS

11 Section 901. (Reserved).

12 Section 902. Effective date.

13 This act shall take effect in 60 days.