

CHAPTER 388

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 00-1309

BY REPRESENTATIVES Mitchell, May, Hagedorn, Kester, Takis, Tupa, Young, Zimmerman, Allen, Bacon, Chavez, Coleman, Fairbank, Gagliardi, Gordon, Gotlieb, Grossman, Hefley, Kaufman, Larson, Lawrence, Leyba, Mace, Miller, Morrison, Plant, Saliman, Tate, Veiga, S. Williams, and Windels;
also SENATORS Teck, Chlouber, Dennis, Weddig, and Hernandez.

AN ACT

CONCERNING ENACTMENT OF THE "COLORADO JUNK EMAIL LAW", AND, IN CONNECTION THEREWITH,
RESTRICTING UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 2.5
Colorado Junk Email Law

6-2.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO JUNK EMAIL LAW".

6-2.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CURRENT OR PRIOR BUSINESS RELATIONSHIP" MEANS:

(a) THE RECIPIENT HAS INDICATED A WILLINGNESS TO RECEIVE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THAT SENDER; OR

(b) THE RECIPIENT HAS PURCHASED OR LEASED REAL PROPERTY, GOODS, OR SERVICES FROM THE SENDER OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE, THE MESSAGE FROM THE SENDER DIRECTLY CONCERNS THE PURCHASE OR LEASE, AND THE MESSAGE IS SENT WITHIN THE WARRANTY PERIOD OR WITHIN THIRTEEN MONTHS AFTER THE DATE OF PURCHASE OR LEASE, WHICHEVER PERIOD IS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

A GREATER LENGTH OF TIME; OR

(c) THE RECIPIENT HAS AN ONGOING CONTRACT WITH THE SENDER OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE, AND THE MESSAGE FROM THE SENDER DIRECTLY CONCERNS THE ONGOING CONTRACT.

(2) "ELECTRONIC MAIL" MEANS AN ELECTRONIC MESSAGE OR COMPUTER FILE CONTAINING AN IMAGE OF A MESSAGE THAT IS TRANSMITTED BETWEEN TWO OR MORE COMPUTERS OR ELECTRONIC TERMINALS. "ELECTRONIC MAIL" INCLUDES ELECTRONIC MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN COMPUTER NETWORKS.

(3) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON THAT IS AN INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC MAIL OR PROVIDES TO END USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL.

(4) "PERSON" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 2-4-401 (8), C.R.S.

(5) "UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE SENT WITHOUT THE RECIPIENT'S EXPRESSED PERMISSION FOR THE PURPOSE OF PROMOTING REAL PROPERTY, GOODS, OR SERVICES FOR SALE OR LEASE.

6-2.5-103. Restrictions on certain commercial electronic mail - violations of article. (1) IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TO FAIL TO DISCLOSE THE ACTUAL POINT-OF-ORIGIN ELECTRONIC MAIL ADDRESS OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.

(2) IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TO FALSIFY ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION FOR THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.

(3) IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TO USE A THIRD PARTY'S INTERNET ADDRESS OR DOMAIN NAME WITHOUT THE THIRD PARTY'S CONSENT FOR THE PURPOSES OF TRANSMITTING ELECTRONIC MAIL.

(4) IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TO FAIL TO USE THE EXACT CHARACTERS "ADV:" (THE CAPITAL LETTERS "A", "D", AND "V", IN THAT ORDER, FOLLOWED IMMEDIATELY BY A COLON) AS THE FIRST FOUR CHARACTERS IN THE SUBJECT LINE OF AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE UNLESS THE SENDER:

(a) IS AN ORGANIZATION USING ELECTRONIC MAIL TO COMMUNICATE EXCLUSIVELY WITH ITS MEMBERS; OR

(b) IS AN ORGANIZATION USING ELECTRONIC MAIL TO COMMUNICATE EXCLUSIVELY

WITH ITS EMPLOYEES OR CONTRACTORS, OR BOTH; OR

(c) HAS A CURRENT OR PRIOR BUSINESS RELATIONSHIP WITH THE RECIPIENT, AS DEFINED IN SECTION 6-2.5-102 (1).

(5) IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON THAT SENDS AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TO FAIL TO PROVIDE A MECHANISM ALLOWING RECIPIENTS TO EASILY AND AT NO COST REMOVE THEMSELVES FROM THE SENDER'S ELECTRONIC MAIL ADDRESS LISTS SO THAT THEY ARE NOT INCLUDED IN FUTURE MAILINGS. IT SHALL ALSO BE A VIOLATION OF THIS ARTICLE TO SEND UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES TO ANY PERSON THAT HAS REQUESTED UNDER THIS SUBSECTION (5) TO BE REMOVED FROM THE SENDER'S ELECTRONIC MAIL LISTS OR TO PROVIDE THE ELECTRONIC MAIL ADDRESS OF ANY SUCH PERSON TO ANY THIRD PARTY, WHETHER OR NOT SUCH THIRD PARTY IS PART OF THE SENDER'S BUSINESS ORGANIZATION. HOWEVER, ELECTRONIC MAIL ADDRESSES MAY BE PROVIDED TO ANY SUCH PERSON OR TO ANY THIRD PARTY FOR THE SOLE PURPOSE OF INCLUSION IN DO-NOT-EMAIL LISTS.

6-2.5-104. Enforcement - civil right of action for damages - civil penalty.

(1) IN THE CASE OF ANY VIOLATION OF THIS ARTICLE, THE FOLLOWING ENTITIES MAY EACH SEPARATELY FILE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AND MAY EACH, UPON PROOF OF SUCH VIOLATION, RECOVER SUCH SUMS AS ARE ALLOWED UNDER THIS SECTION:

(a) THE PERSON RECEIVING AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE;

(b) ANY ELECTRONIC MAIL SERVICE PROVIDER WHOSE NETWORK OR FACILITIES WERE USED IN THE TRANSMISSION OR ATTEMPTED TRANSMISSION OF AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.

(2)(a) IN ANY SUCH ACTION, THE PREVAILING PARTY OTHER THAN THE ORIGINATOR OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE SHALL BE ENTITLED TO ACTUAL DAMAGES. UPON A SHOWING THAT THE SENDER OF AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE VIOLATED ANY PROVISION OF THIS ARTICLE, WHETHER OR NOT THE VIOLATION RESULTED IN A FINANCIAL LOSS OR INJURY, THE PREVAILING PARTY OTHER THAN THE ORIGINATOR OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE MAY RECOVER ATTORNEY FEES AND COSTS.

(b) IN ANY SUCH ACTION, THE PREVAILING PARTY OTHER THAN THE ORIGINATOR OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE IS ALSO ENTITLED TO RECOVER AS PART OF THE JUDGMENT A CIVIL PENALTY IN THE AMOUNT OF TEN DOLLARS FOR EACH UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS ARTICLE.

(3) THE REMEDIES, DUTIES, PROHIBITIONS, AND PENALTIES OF THIS SECTION ARE NOT EXCLUSIVE AND ARE IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES, AND PENALTIES PROVIDED BY LAW.

(4) AT THE REQUEST OF ANY PARTY TO AN ACTION BROUGHT PURSUANT TO THIS SECTION, THE COURT MAY, IN ITS DISCRETION, CONDUCT ALL LEGAL PROCEEDINGS IN

SUCH A WAY AS TO PROTECT THE SECRECY AND SECURITY OF ANY COMPUTER, COMPUTER NETWORK, COMPUTER DATA, OR COMPUTER SOFTWARE INVOLVED IN ORDER TO PREVENT POSSIBLE RECURRENCE OF THE SAME OR SIMILAR CONDUCT BY ANOTHER PERSON AND TO PROTECT THE TRADE SECRETS OF ANY PARTY.

(5) ELECTRONIC MAIL SERVICE PROVIDERS THAT ADOPT AND IMPLEMENT TERMS, CONDITIONS, OR TECHNICAL MEASURES WITH THE INTENT TO PREVENT OR PROHIBIT THE ORIGINATION OR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES IN VIOLATION OF THIS ARTICLE SHALL BE IMMUNE FROM CIVIL LIABILITY FOR ANY SUCH ACTIONS, AND NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED TO CREATE ANY LIABILITY FOR SUCH ACTIONS.

(6) NO ELECTRONIC MAIL SERVICE PROVIDER SHALL BE LIABLE FOR THE MERE TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES OVER THE PROVIDER'S COMPUTER NETWORK OR FACILITIES.

(7) THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE ANY ELECTRONIC MAIL SERVICE PROVIDER TO CARRY OR DELIVER ANY ELECTRONIC MAIL MERELY BECAUSE A SENDER COMPLIES WITH THE PROVISIONS OF THIS ARTICLE.

6-2.5-105. Scope of article. THIS ARTICLE SHALL APPLY WHEN AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE IS SENT TO A COLORADO RESIDENT VIA AN ELECTRONIC MAIL SERVICE PROVIDER'S SERVICE OR LEASED OR OWNED EQUIPMENT LOCATED IN THIS STATE.

SECTION 2. 13-6-105 (1) (f), Colorado Revised Statutes, is amended to read:

13-6-105. Specific limits on civil jurisdiction. (1) The county court shall have no civil jurisdiction except that specifically conferred upon it by law. In particular, it shall have no jurisdiction over the following matters:

(f) Original proceedings for the issuance of injunctions, except as provided in section 13-6-104 (5), except as required to enforce restrictive covenants on residential property AND TO ENFORCE THE PROVISIONS OF ARTICLE 2.5 OF TITLE 6, C.R.S., and except as otherwise specifically authorized in this article or, if there is no authorization, by rule of the Colorado supreme court.

SECTION 3. 13-6-403 (2) (h), Colorado Revised Statutes, is amended to read:

13-6-403. Jurisdiction of small claims court - limitations. (2) The small claims court shall have no jurisdiction except that specifically conferred upon it by law. In particular, it shall have no jurisdiction over the following matters:

(h) Actions involving injunctive relief, except as required to enforce restrictive covenants on residential property AND TO ENFORCE THE PROVISIONS OF ARTICLE 2.5 OF TITLE 6, C.R.S.;

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

Became Law: June 3, 2000