

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
95th General Assembly
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As Engrossed: S4/9/25

A Bill

HOUSE BILL 1957

By: Representative S. Meeks

By: Senator J. English

For An Act To Be Entitled

AN ACT TO AMEND THE UNSOLICITED COMMERCIAL AND
SEXUALLY EXPLICIT ELECTRONIC MAIL PREVENTION ACT TO
INCLUDE UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT
TEXT MESSAGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE UNSOLICITED COMMERCIAL AND
SEXUALLY EXPLICIT ELECTRONIC MAIL
PREVENTION ACT TO INCLUDE UNSOLICITED
COMMERCIAL AND SEXUALLY EXPLICIT TEXT
MESSAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-88-601 is amended to read as follows:
4-88-601. Title.

This subchapter may be referred to and cited as the "Unsolicited
Commercial and Sexually Explicit Electronic Mail and Text Message Prevention
Act".

SECTION 2. Arkansas Code § 4-88-602(10)(A)(i), concerning the
definition of "preexisting business relationship" under the Unsolicited
Commercial and Sexually Explicit Electronic Mail Prevention Act, is amended
to read as follows:

(10)(A)(i) "Preexisting business relationship" means that there
was a business transaction or communication between the sender and the
recipient of a commercial electronic mail or text message during the five-



year period preceding the receipt of that message.

SECTION 3. Arkansas Code § 4-88-602(12), concerning the definition of "unsolicited" under the Unsolicited Commercial and Sexually Explicit Electronic Mail Prevention Act, is amended to read as follows:

(12) "Unsolicited" means without the recipient's express permission, except that commercial electronic mail or text message is not unsolicited if the sender has a preexisting business or personal relationship with the recipient.

SECTION 4. Arkansas Code § 4-88-602, concerning definitions under the Unsolicited Commercial and Sexually Explicit Electronic Mail Prevention Act, is amended to add additional subdivisions to read as follows:

(13) "Phone service provider" means a person who:

(A) Is an intermediary in the transmission of a text message from the sender to the recipient; or

(B) Provides to end users of text message services via a telephone number the ability to send and receive text messages;

(14) "Text message" means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a ten (10) digit telephone number;

SECTION 5. Arkansas Code § 4-88-603 is amended to read as follows:

4-88-603. Unsolicited commercial or sexually explicit electronic mail or text message – Requirements.

(a) Each person who sends or causes to be sent an unsolicited commercial electronic mail or text message or an unsolicited sexually explicit electronic mail or text message through the intermediary of an electronic mail service provider or to an electronic mail address or phone number held by a resident of the state shall:

~~(1)(A) Conspicuously~~ For a commercial message to an electronic mail address, conspicuously state in the electronic mail the sender's:

~~(A)(i)~~ Legal name;

~~(B)(ii)~~ Correct street address; and

~~(C)(iii)~~ Valid internet domain name; and

(B) For a commercial text message, conspicuously state the:

(i) Person from whom the text message originates;
(ii) Purpose of the text message; and
(iii) Ability to opt out and method of opting out of receiving further text messages from the person;

(2) For a sexually explicit electronic mail, include in the electronic mail a subject line that contains "adv:adult" as the first nine (9) characters;

(3) Provide the recipient a convenient, no-cost mechanism to notify the sender not to send any future electronic mail to the recipient, including:

(A) Return electronic mail to a valid, functioning return electronic address; and

(B) For a sexually explicit electronic mail and if the sender has a toll-free telephone number, the sender's toll-free telephone number; and

(4) Conspicuously provide in the text of the electronic mail a notice:

(A) That informs the recipient that the recipient may conveniently and at no cost be excluded from future commercial or sexually explicit electronic mail, as the case may be, from the sender; and

(B) For sexually explicit electronic mail, if the sender has a toll-free telephone number, that includes the sender's valid, toll-free telephone number that the recipient may call to be excluded from future electronic mail from the sender.

(b)(1) A commercial electronic mail or text message is not unsolicited if the sender has a preexisting business or personal relationship with the recipient.

(2) The sender of a commercial electronic mail or text message of this nature must still include in the electronic mail message or text message the required disclosures set forth in subdivisions (a)(3) and (4) of this section and shall remove the recipient from future mailings or text messages if requested.

(c) A person who sends or causes to be sent an unsolicited commercial electronic mail or an unsolicited sexually explicit electronic mail through

the intermediary of an electronic mail service provider located in the state or to an electronic mail address held by a resident of the state ~~may~~ shall not:

(1) Use a third party's internet domain name in identifying the point of origin or in stating the transmission path of the electronic mail without the third party's consent;

(2) Misrepresent any information in identifying the point of origin or the transmission path of the electronic mail; or

(3) Fail to include in the electronic mail the information necessary to identify the point of origin of the electronic mail.

(d)(1) If the recipient of an unsolicited commercial electronic mail or text message or an unsolicited sexually explicit electronic mail or text message notifies the sender that the recipient does not want to receive future commercial electronic mail or text message or future sexually explicit electronic mail or text message from the sender, the sender may not send that recipient a commercial electronic mail or text message or a sexually explicit electronic mail or text message either directly or through a subsidiary or affiliate.

(2) If a recipient has requested to be removed from future mailings or text messages, the sender may recontact the recipient if a preexisting business relationship has been reestablished or if the recipient has expressly requested to receive future mailings or text messages from the sender.

SECTION 6. Arkansas Code § 4-88-604 is amended to read as follows:

4-88-604. Interactive computer service, ~~and~~ and electronic mail service provider, and phone service provider authority.

(a) An interactive computer service, ~~or~~ and electronic mail service provider, or phone service provider may block the receipt or transmission through its service of any bulk electronic mail or text message that it reasonably believes is or will be sent in violation of this subchapter.

(b) An interactive computer service, ~~or~~ and electronic mail service provider, or phone service provider is not:

(1) In violation of this section and the injured party shall not have a cause of action against an interactive computer service, ~~or~~ and electronic mail service provider, or phone service provider due to the fact that the

interactive computer service, ~~or~~ electronic mail service provider, or phone service provider:

(A) Is an intermediary between the sender and recipient in the transmission of an electronic mail or text message that violates this section; or

(B) Provides transmission of unsolicited commercial electronic mail messages or text messages over the provider's computer network or facilities; or

(2) Liable for any action it voluntarily takes in good faith to block the receipt or transmission through its service of any electronic mail or text message advertisements that it believes is or will be sent in violation of this subchapter.

(c) An interactive computer service may disconnect or terminate the service of any person who is in violation of this subchapter.

SECTION 7. Arkansas Code § 4-88-606 is amended to read as follows:

4-88-606. Civil action for violation – Election on damages – Costs and attorney's fees – Defense.

(a) For any violation of a provision of this subchapter, an action may be brought by:

(1) A person who received the unsolicited commercial electronic mail or text message or unsolicited sexually explicit electronic mail or text message that violates this subchapter; or

(2) An electronic mail service provider or phone service provider through whose facilities the unsolicited commercial electronic mail or text message or unsolicited sexually explicit electronic mail or text message was transmitted.

(b)(1) In each action under subdivision (a)(1) of this section, a recipient or electronic mail service provider or phone service provider may elect, in lieu of actual damages, to recover the lesser of:

(A) Ten dollars (\$10.00) per unsolicited commercial electronic mail or text message or unsolicited sexually explicit electronic mail or text message sent to a previously opted-out electronic mail address or phone number or transmitted through the electronic mail service provider or phone service provider or otherwise sent in violation of this subchapter; or

(B) Twenty-five thousand dollars (\$25,000) per day the violation occurs.

(2) Each prevailing recipient or electronic mail service provider or phone service provider shall be awarded costs and reasonable attorney's fees.

(c) It is an affirmative defense to a violation of this subchapter if a person can demonstrate that the sender at the time of the alleged violation had:

(1) Maintained a list of consumers who have notified the person not to send any subsequent commercial electronic messages or text messages;

(2) Established and implemented with due care and reasonable practices and procedures to effectively prevent unsolicited commercial electronic mail messages or text messages in violation of this subchapter;

(3) Trained the sender's personnel in the requirements of this subchapter; and

(4) Maintained records demonstrating compliance with this subchapter.

SECTION 8. Arkansas Code § 4-88-607(a)(1), concerning the transmission of unsolicited commercial or sexually explicit electronic mail being considered an unfair and deceptive act or practice, is amended to read as follows:

(a)(1) Any transmission of unsolicited commercial or sexually explicit electronic mail or text message in violation of this subchapter shall constitute an unfair and deceptive act or practice under § 4-88-107.

/s/S. Meeks