House Research
Act Summary

CHAPTER: 395 **SESSION:** 2002 Regular Session

TOPIC: Internet Consumer Information Privacy and Commercial Electronic Mail Solicitation

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Overview

This bill contains two articles. **Article 1** restricts Internet service providers in disclosing personally identifiable consumer information. **Article 2** requires disclosure about certain unsolicited commercial e-mails ("spam") and requires that recipients be allowed to direct that they not be sent.

Section

Article 1

Internet Privacy

Article 1 limits Internet service providers from disclosing personally identifiable information about customers who are consumers without their consent, except under specified circumstances.

1. **Definitions.**

Subd. 2. Consumer. "Consumer" means a person who pays an Internet service provider for access for personal, family, or household purposes and does not resell access.

Subd. 3. Internet service provider (ISP). "Internet service provider" means a business or person who provides consumers access to the Internet via telecommunications. Does not include telecommunications offered on a common carrier basis.

Subd. 4. Ordinary course of business. "Ordinary course of business" means debt collection, order filling, request processing, or the transfer of ownership.

Subd. 5. Personally identifiable information. "Personally identifiable information" means information that identifies:

a consumer's physical or electronic address or telephone number;

whether a consumer has requested or obtained specific materials or services from an

ISP;

Internet or online sites visited; or

any of the contents of a consumer's data storage devices.

2. **Disclosure of personal information prohibited.** Prohibits an ISP from disclosing personally identifiable information except as allowed under this chapter.

3. **Disclosure of personal information required.** Provides for when an ISP must disclose personally identifiable information about a consumer:

   to a grand jury;

   to a state or federal law enforcement officer acting as authorized by law;

   pursuant to a court order in a civil proceeding on a showing of compelling need that cannot be accommodated by other means;

   to a court in an action brought to collect charges owed to the ISP, in order to establish the existence of a delinquency or purchase agreement;

   to the consumer upon written or electronic request and on payment of a fee not to exceed the actual cost of data retrieval;

   pursuant to state or federal subpoena, including administrative subpoena; or

   pursuant to a warrant or court order.

4. **Disclosure of personal information; authorization.** Permits disclosure:

   with authorization of the consumer;

   to a person in the ordinary course of business of an ISP;

   to another ISP to report or prevent violation of the published acceptable use policy or customer service agreement of an ISP; except that the recipient may further disclose only as allowed by this chapter; or

   as permitted by the state wiretap statute.

   A request for authorization to disclose personally identifiable information about a consumer may be obtained by an ISP in writing or electronically. It must disclose the types of persons who will get the information and the anticipated use. A contract between an ISP and a consumer must state either (1) authorization to disclose will be obtained by act of the consumer, or (2) failure to object constitutes authorization of disclosure. The authorization provision must be conspicuous in the consumer contract. The authorization may be obtained in a manner designed to comply with this section. Authorization obtained consistent with industry guidelines is acceptable.

5. **Security of information.** Requires an ISP to take reasonable steps to maintain the security of personally identifiable consumer information. States that the ISP is not liable for specified acts that would constitute computer theft and hacking crimes if the ISP does not participate in, authorize, or approve the acts.

6. **Exclusion from evidence.** Prohibits the use of personally identifiable information as evidence unless it was obtained as provided by this chapter.

7. **Enforcement; civil liability; defenses.** Provides that a consumer who prevails or substantially prevails in an action alleging a violation of this chapter is entitled to $500 or actual damages, whichever is greater, and reasonable attorney fees, costs, and disbursements. Prohibits class actions.

   Provides a defense: that the ISP has established and implemented reasonable practices to prevent violations of this chapter.

8. **Other law.** This chapter is in addition to privacy protection provided by other laws, except (1) it

does not limit authority under state or federal law for law enforcement or prosecutors to obtain information; and (2) if federal law is enacted on the subject but does not preempt this chapter, federal law supersedes any conflicting provisions.

9. **Application.** Provides that article 1 applies to ISPs when serving consumers in this state.

10. **Records concerning electronic communications service.** Amends a provision of the wiretap law to cross reference the new chapter.

11. **Effective date; expiration.** Article 1 is effective March 1, 2003. It expires on the effective date of federal law that preempts state regulation of the subject.

Article 2

Commercial Electronic Mail Solicitation

Article 2 provides protections and imposes requirements on persons sending unsolicited commercial e-mail messages ("spam"). It requires letting people direct that they not be sent such messages.

1. **False or misleading commercial electronic mail messages.**

Subd. 1. Definitions. "Commercial e-mail" is defined as a message sent through ISP facilities in this state to a resident of this state to promote goods or services for sale or lease. Defines other terms used in the section.

Subd. 2. False or misleading messages prohibited. Prohibits a person from initiating an e-mail message that uses another party's domain name without permission, that misrepresents the originator of the message, or that contains false or misleading information in the subject line.

Subd. 3. Subject disclosure. Requires the subject line of a commercial e-mail to contain the letters "ADV" as the first characters and, if it is an adult-specific message, to contain the letters "ADV-ADULT." This does not apply if the recipient requested or consented to receive the document or had a prior business or personal relationship with the sender. "Business relationship" is defined. This subdivision also does not apply to entities that only use e-mail to communicate with members, employees, or contractors.

Subd. 4. Toll-free number. Requires the initiator of a commercial e-mail to have a toll-free telephone number, return e-mail address, or other easy-to-use electronic method to notify the sender not to transmit any more unsolicited e-mail documents. A commercial e-mail must notify the recipient of such a toll-free number, return e-mail address, or other response mechanism.

Subd. 5. Blocking receipt or transmission. Permits an interactive computer service to block commercial e-mails that it reasonably believes are being sent or will be sent in violation of this section. The blocking service is not liable in an action by a recipient for good faith blocking.

Subd. 6. Defenses. Provides the following defenses: (1) the sender can show a message was not initiated by the sender or was initiated in a manner and form not subject to his or her control; or (2) the defendant has established and implemented reasonable procedures to prevent violations.

Subd. 7. Damages. A recipient may recover (1) the lesser of $25 for each e-mail or $35,000 per day for a violation of subdivision 2; or (2) the lesser of $10 for each e-mail or $25,000 per day for a violation of subdivision 3.

An injured e-mail service provider may choose the above as liquidated damages or may seek actual damages.

A court is authorized to conduct proceedings in a manner that protects trade secrets.

Costs, disbursements, and attorney fees may be awarded to a party who receives damages under this section.

Except as limited by this section, remedies are also available under consumer protection laws.

Subd. 8. Relationship to federal law. If federal law is enacted on this subject and does not preempt state law, the federal law supersedes any conflicting provisions of this section.

2. **Effective date; expiration.** Article 2 is effective March 1, 2003.

Article 2 expires on the effective date of federal law that preempts state regulation of false, misleading, or unsolicited commercial e-mails.