

- 28 (a) between two or more computers, computer networks, or electronic terminals; or
- 29 (b) within a computer network.

30 (4) "Email address" means a destination, commonly expressed as a string of characters,
31 to which email may be sent or delivered.

32 (5) "Email service provider" means a person that:

- 33 (a) is an intermediary in the transmission of email from the sender to the recipient; and
- 34 (b) provides to end users of email service the ability to send and receive email.

35 (6) "Internet domain name" means a globally unique, hierarchial reference to an Internet
36 host or service, assigned through centralized Internet authorities, comprising a series of character
37 strings separated by periods, with the right-most string specifying the top of the hierarchy.

38 (7) "Unsolicited" means without the recipient's express permission, unless the sender has
39 a preexisting business or personal relationship with the recipient.

40 Section 3. Section **63D-2-103** is enacted to read:

41 **63D-2-103. Unsolicited commercial email -- Requirements.**

42 (1) Each person who sends or causes to be sent an unsolicited commercial email through
43 the intermediary of an email service provider located in the state or to an email address held by a
44 resident of the state shall:

45 (a) conspicuously state in the email the sender's:

- 46 (i) legal name;
- 47 (ii) correct street address; and
- 48 (iii) valid Internet domain name;

49 (b) include in the email a subject line that contains "ADV:" as the first four characters;

50 (c) provide the recipient a convenient, no-cost mechanism, including return email and a
51 toll-free telephone number, to notify the sender not to send any future emails to the recipient; and

52 (d) conspicuously provide in the text of the email a notice that:

53 (i) informs the recipient that the recipient may conveniently and at no cost be excluded
54 from future commercial emails from the sender; and

55 (ii) includes the sender's valid, toll-free telephone number that the recipient may call to be
56 excluded from future emails from the sender.

57 (2) A person who sends or causes to be sent an unsolicited commercial email through the
58 intermediary of an email service provider located in the state or to an email address held by a

59 resident of the state may not:

60 (a) use in the email a third party's Internet domain name without the third party's consent;

61 or

62 (b) misrepresent any information in identifying the point of origin or the transmission path
63 of the email.

64 (3) If the recipient of an unsolicited commercial email notifies the sender that the recipient
65 does not want to receive future commercial emails from the sender, the sender may not send that
66 recipient a commercial email, either directly or through a subsidiary or affiliate.

67 Section 4. Section **63D-2-104** is enacted to read:

68 **63D-2-104. Civil action for violation -- Election on damages -- Costs and attorney**
69 **fees.**

70 (1) For any violation of a provision of Section 63D-2-103, an action may be brought by:

71 (a) a person who received the unsolicited commercial email with respect to which the
72 violation under Section 63D-2-103 occurred; or

73 (b) an email service provider through whose facilities the unsolicited commercial email
74 was transmitted.

75 (2) In each action under Subsection (1):

76 (a) a recipient or email service provider may:

77 (i) recover actual damages; or

78 (ii) elect, in lieu of actual damages, to recover the lesser of:

79 (A) \$10 per unsolicited commercial email received by the recipient or transmitted through
80 the email service provider; or

81 (B) \$25,000 per day that the violation occurs; and

82 (b) each prevailing recipient or email service provider shall be awarded costs and
83 reasonable attorney fees.

Legislative Review Note
as of 12-17-01 10:47 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel