Electronic Transmission of Sexually Explicit Advertisement Material

This Act requires that an unsolicited advertisement containing sexually explicit material transmitted via an electronic communication have a warning label “ADV-ADULT” at the beginning of the subject line of the advertisement in order for parents to protect children from sexually explicit material. Any person who transmits an unsolicited advertisement containing sexually explicit speech without the warning label is guilty of a misdemeanor of the first degree for the first offense and a felony for subsequent violations.

Submitted as:
Pennsylvania
P.L. 130, No. 25 of 2000
Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Electronic Transmission of Sexually Explicit Advertisement Material.”

Section 2. [Legislative Findings.] The [General Assembly] finds and declares as follows:

1. The Internet is an increasingly valuable medium for communication and the dissemination and collection of information.
2. Children use the Internet for entertainment, education and commerce.
3. Many children have access to electronic mail accounts through their parents’ accounts, shared accounts or their own personal accounts.
4. Increasingly advertisers use the Internet to market explicit sexual materials to millions of users of the Internet.
5. One of the frequently used vehicles for the marketing of explicit sexual materials via the Internet is unsolicited electronic mail messages.
6. These unsolicited explicit sexual advertisements are sent to computers in households allowing children to view or have access to pornographic materials.
7. Although there are an increasing number of Internet filtering software titles that parents can use to block access to obscene World Wide Web sites, these filtering software titles are ineffective against explicit sexual material that is sent via electronic mail.
8. There is no universal method of identifying electronic mail messages that market explicit sexual materials.
9. Despite the best efforts of parents to protect their children from explicit sexual material via electronic mail messages, they are unable to do so because there is no method by which they can separate and filter out inappropriate messages from appropriate messages.
10. The State has a compelling interest in protecting children from explicit sexual material.
11. In doing so, government must enact a narrowly tailored remedy to avoid interfering with the growth or accessibility of this important medium and with the rights of adult users of the Internet under the First Amendment to the Constitution of the United States and [insert citation].
12. This Act empowers parents to decide what type of messages are inappropriate for their children and effectively block those messages from their children’s electronic mail accounts.
(13) This Act does not restrict or prevent the sending of unsolicited explicit sexual electronic advertisements to any and all prospective recipients as long as an appropriate warning accompanies such advertisements.

Section 3: [Obscene and Other Sexual Materials and Performances.]

(1) No person, knowing the obscene character of the materials or performances involved, shall:

(a) display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;

(b) sell, lend, distribute, transmit, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person [eighteen (18)] years of age or older, or knowingly advertise any obscene materials in any manner;

(c) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;

(d) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;

(e) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity;

(f) hire or employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;

(g) knowingly take or deliver in any manner any obscene material into a state correctional institution, county prison, regional prison facility or any other type of correctional facility;

(h) possess any obscene material while such person is an inmate of any state correctional institution, county prison, regional prison facility or any other type of correctional facility; or

(i) knowingly permit any obscene material to enter any state correctional institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

Section 4. [Dissemination of Explicit Sexual Material via an Electronic Communication.]

(1) No person, knowing the content of the advertisement to be explicit sexual materials as defined in this section shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in [insert citation] to one or more persons within this State that contains explicit sexual materials as defined in this section without including in the advertisement the term “ADV-ADULT” at the beginning of the subject line of the advertisement.

(2) As used in this section:

For the purpose of applying the “contemporary community standards,” “Community” means the State.

“Knowing” means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.

“Material” means any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.
“Nude” means showing the human male or female genitals, pubic area or buttocks with less
than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any
portion thereof below the top of the nipple.

“Obscene” means any material or performance, if:
(a) the average person applying contemporary community standards would find that
the subject matter taken as a whole appeals to the prurient interest;
(b) the subject matter depicts or describes in a patently offensive way, sexual
conduct of a type described in this section; and
(c) the subject matter, taken as a whole, lacks serious literary, artistic, political,
educational or scientific value.

“Performance” means any play, dance or other live exhibition performed before an audience.

“Sadomasochistic abuse” means, in a sexual context, flagellation or torture by or upon a
person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being
fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

“Sexual conduct” means patently offensive representations or descriptions of ultimate sexual
acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual
bestiality; and patently offensive representations or descriptions of masturbation, excretory functions,
sadomasochistic abuse and lewd exhibition of the genitals.

“Subject line” means the area of an electronic communication that contains a summary
description of the content of the message.

“Transportation facility” means any conveyance, premises or place used for or in connection
with public passenger transportation, whether by air, rail, motor vehicle or any other method, including
aircraft, watercraft, railroad cars and buses, and air, boat, railroad, and bus terminals and stations.

Section 5. [Criminal Prosecution.] Any person who violates this Act is guilty of a [misdemeanor of
the first degree]. Violation of the Act is a [felony of the third degree] if the offender has previously been
convicted of a violation of the Act or if the material was sold, distributed, prepared or published for the
purpose of resale.

Section 6. [Penalty for Attempt to Evade Prosecution.] Any person who violates this Act and attempts
to avoid prosecution by knowingly including false or misleading information in the return address portion of
the electronic communications such that the recipient would be unable to send a reply message to the original,
authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine
of not less than [one hundred (100)] dollars nor more than [five hundred (500)] dollars per message or to
imprisonment for not more than [ninety (90)] days, or both, for a first offense and a fine of not less than [five
hundred (500)] dollars nor more than [one thousand (1,000)] dollars or to imprisonment for not more than
[one (1)] year or both, for a second or subsequent offense.

Section 7. [Concurrent Jurisdiction to Prosecute.] The [attorney general] shall have the concurrent
prosecutorial jurisdiction with the district attorney for cases arising under this Act and may refer to the
[district attorney], with the [district attorney’s] consent, any violation or alleged violation of this Act which
may come to the [attorney general’s] attention.

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]