

SB 601-FN - AS INTRODUCED

2024 SESSION

24-3160

08/05

SENATE BILL ***601-FN***

AN ACT restricting electronic mail solicitation.

SPONSORS: Sen. Ricciardi, Dist 9; Sen. Gannon, Dist 23; Sen. Avar, Dist 12; Sen. Rosenwald,
Dist 13

COMMITTEE: Judiciary

ANALYSIS

This bill makes certain restrictions to electronic mail solicitation and provides penalties for violations of such restrictions.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT restricting electronic mail solicitation.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Electronic Mail Solicitation; Restrictions. Amend RSA 358-A by inserting after
2 section 13 the following new section:

3 358-A:14 Electronic Mail Solicitation; Restrictions.

4 I. In this section:

5 (a) "E-mail" means electronic mail sent or delivered by transmission over the Internet.

6 (b) "E-mail service provider" means a business or organization qualified to business in
7 New Hampshire that provides individuals, corporations, or other entities the ability to send or
8 receive e-mail through equipment located in this state or that is an intermediary in sending or
9 receiving e-mail.

10 (c) "Unsolicited commercial e-mail" means:

11 (1) An email, other than an e-mail sent at the request of the recipient, sent via an e-
12 mail service provider to 2 or more recipients in this state with who the sender does not have an
13 existing business relationship for the purpose of:

14 (A) Offering real property, goods, or services for sale or rent;

15 (B) Conveying information on real property, goods, or services to solicit sales or
16 purchase;

17 (C) Conveying information on the extension of credit; or

18 (D) Promoting or soliciting charitable contributions.

19 (2) "Unsolicited commercial e-mail" does not include an e-mail message to which an
20 e-mail service provider has attached an advertisement if the e-mail service provider has an
21 agreement with the recipient under which the e-mail service provider allows the recipient free use of
22 an e-mail account in exchange for allowing the e-mail service provider to send such advertisements.

23 II. A person sending unsolicited commercial e-mail shall maintain a valid return e-mail
24 address through which the recipient may provide notice to the sender that the recipient does not wish
25 to receive any more unsolicited commercial e-mail.

26 III. All unsolicited commercial e-mail shall contain:

27 (a) In the subject line:

28 (1) The first 4 characters as follows: "ADV:" and

29 (2) If the unsolicited commercial e-mail contains information about material that
30 may be viewed only by a person at least 18 years of age, the first 8 characters as follows:
31 "ADV:ADLT";

(b) A statement informing the recipient of the name of the person or entity from which the unsolicited commercial e-mail originated;

(c) The return e-mail address required by paragraph II; and

(d) A statement informing the recipient that the recipient may use the return e-mail address to notify the sender that the recipient does not want to receive any more unsolicited commercial e-mails from the sender.

IV. A person receiving notification from a recipient that the recipient does not wish to receive any more unsolicited commercial e-mails from that person shall cease to send unsolicited commercial e-mails to that recipient. If a recipient is the registered owner of more than one e-mail address and notifies the sender of unsolicited commercial e-mails to cease sending unsolicited commercial e-mails to all of the e-mail addresses registered to that person or entity, the sender shall cease to send unsolicited commercial e-mails to those addresses.

V. A person shall not:

(a) Send an unsolicited commercial e-mail that uses a 3rd party's Internet address or domain name without the 3rd party's consent; or

(b) Falsify the e-mail transmission information or other routing information of an unsolicited commercial e-mail.

VI. Violation of this section shall be considered an unfair trade practice as prohibited by RSA 358-A:2. Each unsolicited commercial e-mail transmission to a recipient in violation of this section constitutes a separate violation. The attorney general shall establish procedures for receiving and investigating complaints of violations of this section. The procedures may include the development of electronic forms, available over the Internet, by which a person may file a complaint with the attorney general alleging a violation of this section.

VII.(a) Notwithstanding RSA 358-A:10, a person who receives a commercial e-mail sent in violation of this section may bring an action in an appropriate state court for either or both of the following:

(1) An injunction to stop such future emails; and

(2) Recovery of actual damages from each violation or up to \$250 in damages for each violation, whichever is greater.

(b) If the court finds there has been a violation of this section, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

(c) If the court finds that the defendant willfully or knowingly violated this chapter the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (a)(2).

VIII. Notwithstanding RSA 358-A:10, an email service provider through whose service is sent a commercial e-mail in violation of this section may bring an action in an appropriate state court for either or both of the following:

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1 (a) An injunction to stop such future e-mails; and

2 (b) Recovery of actual damages from each violation or up to \$1,000 in damages for each
3 violation whichever is greater.

4 (c) If the court finds there has been a violation of this section, the court shall award the
5 petitioner reasonable attorney's fees and costs incurred in connection with the action.

6 (d) If the court finds that the defendant willfully or knowingly violated this section the
7 court may, in its discretion, increase the amount of the award to an amount equal to not more than 3
8 times the amount available under subparagraph (b).

9 IX. An e-mail service provider may, upon its own initiative, block the receipt or transmission
10 through its service of any commercial e-mail that it reasonable believes is or will be sent in violation
11 of this section. An e-mail service provider is not liable for any action taken in good faith to block the
12 receipt or transmission through its service of any commercial e-mail that it reasonable believes is or
13 will be sent in violation of this section.

14 2 Effective Date. This act shall take effect January 1, 2025.

SB 601-FN- FISCAL NOTE
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AN ACT restricting electronic mail solicitation.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	In excess of \$188,000	In excess of \$339,000	In excess of \$344,000
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill makes certain restrictions to electronic mail solicitation and provides penalties for violations of such restrictions.

The Department of Justice indicates this bill would require the Attorney General to establish procedures for receiving and investigating complaints for potential violations of the proposed restrictions on electronic mail solicitation. Each unsolicited commercial email would constitute a separate violation. The procedures may include the development of electronic forms for people to submit complaints electronically. While the Attorney General, through the Consumer Protection and Antitrust Bureau already has an online complaint form and process, the bill requires additional information to determine whether there is a potential violation of proposed RSA 358-A:14. Given how frequently businesses send emails, the Department assumes the volume of complaints and related investigations could be high. It may be difficult to determine whether a person has agreed to receive emails from a particular business or whether the email is unsolicited. The Department states that reviewing these commercial emails would likely require additional staff resources in the Consumer Protection and Antitrust Bureau. The Department indicates there would be no revenues associated with this bill. The Department assumes it

would need an attorney, an investigator and a investigative paralegal to provide tasks related to this bill. The estimated cost for these positions, including benefits, equipment and associated operating costs will be \$188,000 in FY 2025 (1/2 year) \$339,000 in FY 2026 and \$344,000 in FY 2027.

The Judicial Branch indicates that it is not possible to estimate how this bill would change the number of filings in the court system. Because grounds and remedies surrounding unsolicited emails are expanded, it is expected litigation would increase.

AGENCIES CONTACTED:

Department of Justice and Judicial Branch