

106TH CONGRESS  
2D SESSION

# S. 2542

To protect individuals, families, and ISPs from unsolicited bulk commercial e-mail.

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IN THE SENATE OF THE UNITED STATES

MAY 11, 2000

Mr. BURNS (for himself, Mr. WYDEN, Mr. LIEBERMAN, Ms. LANDRIEU, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To protect individuals, families, and ISPs from unsolicited bulk commercial e-mail.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF SECTIONS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Controlling the Assault of Non-Solicited Pornography  
6 and Marketing Act of 2000”.

7 (b) **TABLE OF SECTIONS.**—The table of sections for  
8 this Act is as follows:

- Sec. 1. Short title; table of sections.
- Sec. 2. Findings.
- Sec. 3. Public policy statement.
- Sec. 4. Prohibited acts.

Sec. 5. Rules applicable to ISPs.

Sec. 6. Rules applicable to domain registrar information.

Sec. 7. Notification of violators.

Sec. 8. Enforcement of orders.

Sec. 9. Remedies available to ISPs.

Sec. 10. Enforcement by States.

Sec. 11. Effect on other laws.

Sec. 12. Commission study into effects of unsolicited bulk commercial electronic mail.

Sec. 13. Definitions.

Sec. 14. Effective date.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) There is a right of free speech on the Inter-  
4 net.

5 (2) The Internet has increasingly become a crit-  
6 ical mode of global communication and now presents  
7 unprecedented opportunities for the development and  
8 growth of global commerce and an integrated world-  
9 wide economy. In order for global commerce on the  
10 Internet to reach its full potential, individuals and  
11 entities using the Internet and other online services  
12 should be prevented from engaging in activities that  
13 prevent other users and ISPs from having a reason-  
14 ably predictable, efficient, and economical online ex-  
15 perience.

16 (3) Unsolicited commercial e-mail can be an im-  
17 portant mechanism through which businesses adver-  
18 tise and attract customers in the online environment.

19 (4) The receipt of unsolicited commercial e-mail  
20 may result in costs to recipients who cannot refuse

1 to accept such mail and who incur costs for the stor-  
2 age of such mail, or for the time spent accessing, re-  
3 viewing, and discarding such mail, or for both.

4 (5) Unsolicited commercial e-mail may impose  
5 significant monetary costs on interactive computer  
6 services, businesses, and educational and nonprofit  
7 institutions that carry and receive such mail, as  
8 there is a finite volume of mail that such providers,  
9 businesses, and institutions can handle without fur-  
10 ther investment. The sending of such mail is increas-  
11 ingly and negatively affecting the quality of service  
12 provided to customers of interactive computer serv-  
13 ice, and shifting costs from the sender of the adver-  
14 tisement to the interactive computer service.

15 (6) While some senders of unsolicited commer-  
16 cial e-mail provide simple and reliable ways for re-  
17 cipients to reject (or “opt-out” of) receipt of unsolic-  
18 ited commercial e-mail from such senders in the fu-  
19 ture, other senders provide no such “opt-out” mech-  
20 anism, or refuse to honor the requests of recipients  
21 not to receive e-mail from such senders in the fu-  
22 ture, or both.

23 (7) An increasing number of senders of unsolic-  
24 ited commercial e-mail and unsolicited pandering e-  
25 mail purposefully disguise the source of such mail

1 so as to prevent recipients from responding to such  
2 mail quickly and easily.

3 (8) Many senders of unsolicited commercial e-  
4 mail and unsolicited pandering e-mail collect or har-  
5 vest e-mail addresses of potential recipients without  
6 the knowledge of those recipients and in violation of  
7 the rules or terms of service of the database from  
8 which such addresses are collected.

9 (9) Because recipients of unsolicited commercial  
10 e-mail and unsolicited pandering e-mail are unable  
11 to avoid the receipt of such mail through reasonable  
12 means, such mail may invade the privacy of recipi-  
13 ents.

14 (10) In legislating against certain abuses on the  
15 Internet, Congress should be very careful to avoid  
16 infringing in any way upon constitutionally protected  
17 rights, including the rights of assembly, free speech,  
18 and privacy.

19 **SEC. 3. PUBLIC POLICY STATEMENT.**

20 The Congress makes the following statement of pub-  
21 lic policy:

22 (1) There is substantial government interest in  
23 regulation of unsolicited bulk commercial e-mail.

24 (2) The cost to the public of Internet use is in-  
25 creased by costs incurred by ISPs for the trans-

1 mission and retransmission of unsolicited commer-  
2 cial e-mail.

3 (3) Recipients of unsolicited commercial e-mail  
4 have a right to decline to receive or have their chil-  
5 dren receive unsolicited commercial e-mail.

6 **SEC. 4. PROHIBITED ACTS.**

7 (a) RETURN ADDRESS REQUIRED.—It is unlawful for  
8 any person to initiate the transmission of an unsolicited  
9 commercial e-mail message to any person within the  
10 United States unless the message contains a valid and le-  
11 gitimately obtained e-mail address, conspicuously dis-  
12 played, to which a recipient may send a reply to the sender  
13 asking the sender to send no further unsolicited bulk com-  
14 mercial e-mail messages to the recipient at the e-mail ad-  
15 dress at which the message was received.

16 (b) TRANSMISSION AFTER REQUESTED STOP.—It is  
17 unlawful for a sender to initiate the transmission of an  
18 unsolicited bulk commercial e-mail message to a recipient  
19 who sent a reply under subsection (a) asking the sender  
20 not to send further such e-mail to the recipient if the e-  
21 mail message is sent more than 10 days after the sender  
22 received the reply.

23 (c) FALSIFICATION OF TRANSMISSION INFORMA-  
24 TION.—It is unlawful for any person to initiate the trans-  
25 mission of an unsolicited commercial e-mail message to

1 any person in the United States with false or misleading  
2 e-mail transmission address or routing information. For  
3 purposes of this subsection, information is misleading if  
4 it is intended, or reasonably may be expected, to mislead  
5 the recipient about the origin of the e-mail message or  
6 the address to which a reply may be sent under subsection  
7 (a).

8 (d) SALE OR DISTRIBUTION OF PROHIBITED SOFT-  
9 WARE.—It is unlawful for any person knowingly to sell,  
10 give, or otherwise distribute, or to possess with the intent  
11 to sell, give, or distribute any software, that—

12 (1) is primarily designed or produced for the  
13 purpose of facilitating or enabling the falsification of  
14 unsolicited commercial e-mail transmission or rout-  
15 ing information;

16 (2) has limited commercially-significant pur-  
17 poses or uses other than to facilitate or enable the  
18 falsification of e-mail transmission or routing infor-  
19 mation; or

20 (3) is marketed for the purpose of facilitating  
21 or enabling the falsification of e-mail transmission or  
22 routing information.

23 **SEC. 5. RULES APPLICABLE TO ISPs.**

24 (a) TRANSMISSION WITHOUT COMPENSATION.—Not-  
25 withstanding any other provision of law to the contrary,

1 an ISP may decline to transmit unsolicited commercial e-  
2 mail messages to its subscribers without compensation  
3 from the sender.

4 (b) **ISP HELD HARMLESS FOR GOOD FAITH PRI-**  
5 **VATE ENFORCEMENT.**—An ISP is not liable, under any  
6 Federal or State civil or criminal law, for any action it  
7 takes in good faith to block the transmission or receipt  
8 of unsolicited commercial e-mail.

9 (c) **INNOCENT RETRANSMISSION.**—An ISP the facili-  
10 ties of which are used only as an intermediary, retrans-  
11 mitter, or relay for unsolicited bulk commercial e-mail  
12 transmitted in violation of section 4 is not liable for any  
13 harm resulting from the transmission or receipt of that  
14 e-mail unless it permits the transmission or retransmission  
15 of such e-mail with actual knowledge that the transmission  
16 is prohibited by section 4.

17 **SEC. 6. RULES APPLICABLE TO DOMAIN REGISTRAR INFOR-**  
18 **MATION.**

19 (a) **UNLAWFUL DISCLOSURE OR USE.**—It is unlawful  
20 for any person within the United States to use or disclose  
21 domain name registration data, obtained from a domain  
22 name registrar, domain name registry, or other domain  
23 registration authority if—

1           (1) that use or disclosure violates policies of  
2           that registrar, registry, or authority that are clearly  
3           and conspicuously posted on its website; and

4           (2) the data is used for the purpose of trans-  
5           mitting or enabling the transmission of unsolicited  
6           bulk commercial e-mail in violation of section 4.

7           (b) **NO LIABILITY FOR FAILURE TO DISCLOSE.**—Ex-  
8           cept as provided in subsection (c), a domain name reg-  
9           istrar, domain name registry, or other domain registration  
10          authority is not liable from any harm resulting from its  
11          failure or refusal to disclose domain name registration  
12          data if that failure or refusal is based on a good faith  
13          belief that disclosure of the data would result in its being  
14          used to transmit, or enable the transmission of, an unsolic-  
15          ited commercial e-mail message in violation of section 4.

16          (c) **LIMITATION.**—Subsection (b) does not permit a  
17          domain name registrar, domain name registry, or other  
18          domain registration authority to limit or restrict access  
19          to domain name registration data if that access is sought  
20          for the purpose of—

21                 (1) enforcing intellectual property rights;

22                 (2) law enforcement; or

23                 (3) consumer protection.

24          **SEC. 7. NOTIFICATION OF VIOLATORS.**

25                 (a) **NOTIFICATION PROCESS.**—

1           (1) IN GENERAL.—The Commission shall send  
2 a notification of alleged violation to any person who  
3 violates section 4 if—

4           (A) the Commission has been notified, in  
5 such form and manner as the Commission may  
6 prescribe, by a recipient or Internet Service  
7 Provider that an unsolicited bulk commercial e-  
8 mail message has been received that was trans-  
9 mitted in violation of section 4; or

10          (B) the Commission has other reason to  
11 believe that such person has violated or is vio-  
12 lating section 4.

13           (2) RECIPIENT'S CHILDREN TO BE PERSON-  
14 ALLY IDENTIFIED.—If requested by a recipient of an  
15 unsolicited bulk commercial e-mail message that was  
16 transmitted in violation of section 4, the Commission  
17 shall include the e-mail address of any child of the  
18 recipient in the notice.

19           (3) TERMS OF NOTIFICATION.—The notification  
20 shall—

21           (A) direct the person to which it is ad-  
22 dressed to refrain from initiating or transmit-  
23 ting further unsolicited bulk commercial e-mail  
24 messages to any e-mail address described in the  
25 notification or to an Internet Service Provider

1 designated in the notification more than 10  
2 days after the date on which the notification is  
3 issued; and

4 (B) direct that person to delete, imme-  
5 diately, the e-mail address of any recipient or  
6 recipient's child named in the notification from  
7 all of that person's e-mail directories or mailing  
8 lists (except for the purpose of complying with  
9 the notification); and

10 (C) prohibit that person from transferring,  
11 with or without consideration, or otherwise  
12 making available, to any other person a mailing  
13 list that contains the e-mail address of any re-  
14 cipient or recipient's child named in the notifi-  
15 cation (except for the purpose of complying  
16 with the notification).

17 (b) ENFORCEMENT OF NOTIFICATION TERMS.—

18 (1) NOTICE.—If the Commission finds that a  
19 person has failed to comply with the terms of a noti-  
20 fication issued under subsection (a), the Commission  
21 shall serve a complaint, by registered or certified  
22 mail, on that person—

23 (A) setting forth the Commission's finding  
24 and the reasons therefore; and

1           (B) requiring that person to respond in  
2           writing to the Commission within 15 days after  
3           the date on which the complaint was served set-  
4           ting forth any defense, in fact or in law, to the  
5           Commission's finding.

6           (2) HEARING AND ORDER.—If the Commission,  
7           after an opportunity for a hearing on the record, de-  
8           termines that the person upon whom the complaint  
9           was served violated the terms of the notification, the  
10          Commission shall issue an order directing that per-  
11          son to comply with the terms of the notification.

12          (c) ENFORCEMENT BY COURT ORDER.—

13           (1) IN GENERAL.—Any district court of the  
14           United States within the jurisdiction of which an e-  
15           mail transmission is sent or received in violation of  
16           a notification given under or the regulations pre-  
17           scribed under section 4 shall have jurisdiction, upon  
18           application by the Attorney General, to issue an  
19           order commanding compliance with such notice.  
20           Failure to observe such order may be punishable by  
21           the court as contempt thereof.

22           (2) REMEDY NOT EXCLUSIVE.—The remedy  
23           provided by paragraph (1) is in addition to any en-  
24           forcement by the Commission under section 9.

1 **SEC. 8. ENFORCEMENT OF ORDERS.**

2 (a) IN GENERAL.—Except as otherwise provided in  
3 this Act, this Act shall be enforced by the Commission in  
4 the same manner as a trade regulation of the Commission.

5 (b) ACTIONS BY THE COMMISSION.—The Commis-  
6 sion shall prevent any person from violating this Act in  
7 the same manner, by the same means, and with the same  
8 jurisdiction, powers, and duties as though all applicable  
9 terms and provisions of the Federal Trade Commission  
10 Act (15 U.S.C. 41 et seq.) were incorporated into and  
11 made a part of this Act. Any entity that violates any provi-  
12 sion of that title is subject to the penalties and entitled  
13 to the privileges and immunities provided in the Federal  
14 Trade Commission Act in the same manner, by the same  
15 means, and with the same jurisdiction, power, and duties  
16 as though all applicable terms and provisions of the Fed-  
17 eral Trade Commission Act were incorporated into and  
18 made a part of that title.

19 **SEC. 9. REMEDIES AVAILABLE TO ISPs.**

20 (a) IN GENERAL.—An ISP adversely affected by a  
21 violation of section 4 may bring a civil action in any dis-  
22 trict court of the United States with jurisdiction over the  
23 defendant—

24 (1) to enjoin further violation of that section by  
25 the defendant;

1           (2) to recover actual damages incurred by the  
2           ISP as a result of that violation; and

3           (3) to recover, in addition to such actual dam-  
4           ages, an amount equal to the greater of—

5                   (A) \$1 for each unsolicited bulk commer-  
6                   cial e-mail message transmitted in violation of  
7                   section 4 that caused the ISP to suffer harm;  
8                   or

9                   (B) \$50,000 for each day on which the de-  
10                  fendant committed the violation that caused the  
11                  ISP to suffer harm.

12          (b) WILLFUL VIOLATION.—If the court finds that the  
13          defendant committed the violation willfully and knowingly,  
14          the court may increase the amount recoverable under sub-  
15          section (a)(3) threefold.

16          (c) COURT COSTS; ATTORNEYS FEES.—The court, in  
17          any action brought under subsection (a), may award court  
18          costs, including the cost of service of process, expert wit-  
19          ness fees, and reasonable attorneys' fees to the prevailing  
20          party.

21          (d) PROTECTION OF TRADE SECRETS.—At the re-  
22          quest of any party to an action brought under subsection  
23          (a), the court may issue appropriate protective orders and  
24          conduct proceedings in such a way as to protect the se-  
25          crecy and security of any computer, computer network,

1 computer data, computer program, and computer software  
2 involved in the action to the extent necessary—

3 (1) to protect the trade secrets of any party;

4 and

5 (2) to prevent the possible recurrence of a viola-  
6 tion.

7 **SEC. 10. ENFORCEMENT BY STATES.**

8 (a) IN GENERAL.—

9 (1) CIVIL ACTIONS.—In any case in which the  
10 attorney general of a State has reason to believe  
11 that an interest of the residents of that State has  
12 been or is threatened or adversely affected by the  
13 engagement of any person in a practice that violates  
14 section 4, the State, as *parens patriae*, may bring a  
15 civil action on behalf of the residents of the State in  
16 a district court of the United States of appropriate  
17 jurisdiction to—

18 (A) enjoin that practice;

19 (B) enforce compliance with the rule;

20 (C) obtain damage, restitution, or other  
21 compensation on behalf of residents of the  
22 State; or

23 (D) obtain such other relief as the court  
24 may consider to be appropriate.

25 (2) NOTICE.—

1 (A) IN GENERAL.—Before filing an action  
2 under paragraph (1), the attorney general of  
3 the State involved shall provide to the  
4 Commission—

5 (i) written notice of that action; and

6 (ii) a copy of the complaint for that  
7 action.

8 (B) EXEMPTION.—

9 (i) IN GENERAL.—Subparagraph (A)  
10 shall not apply with respect to the filing of  
11 an action by an attorney general of a State  
12 under this subsection, if the attorney gen-  
13 eral determines that it is not feasible to  
14 provide the notice described in that sub-  
15 paragraph before the filing of the action.

16 (ii) NOTIFICATION.—In an action de-  
17 scribed in clause (i), the attorney general  
18 of a State shall provide notice and a copy  
19 of the complaint to the Commission at the  
20 same time as the attorney general files the  
21 action.

22 (b) INTERVENTION.—

23 (1) IN GENERAL.—On receiving notice under  
24 subsection (a)(2), the Commission shall have the

1 right to intervene in the action that is the subject  
2 of the notice.

3 (2) EFFECT OF INTERVENTION.—If the Com-  
4 mission intervenes in an action under subsection (a),  
5 it shall have the right—

6 (A) to be heard with respect to any matter  
7 that arises in that action; and

8 (B) to file a petition for appeal.

9 (c) CONSTRUCTION.—For purposes of bringing any  
10 civil action under subsection (a), nothing in this Act shall  
11 be construed to prevent an attorney general of a State  
12 from exercising the powers conferred on the attorney gen-  
13 eral by the laws of that State to—

14 (1) conduct investigations;

15 (2) administer oaths or affirmations; or

16 (3) compel the attendance of witnesses or the  
17 production of documentary and other evidence.

18 (d) VENUE; SERVICE OF PROCESS.—

19 (1) VENUE.—Any action brought under sub-  
20 section (a) may be brought in the district court of  
21 the United States that meets applicable require-  
22 ments relating to venue under section 1391 of title  
23 28, United States Code.

1           (2) SERVICE OF PROCESS.—In an action  
2 brought under subsection (a), process may be served  
3 in any district in which the defendant—

4                   (A) is an inhabitant; or

5                   (B) may be found.

6 **SEC. 11. EFFECT ON OTHER LAWS.**

7           (a) NO EFFECT ON CRIMINAL LAW.—Nothing in this  
8 Act shall be construed to impair the enforcement of sec-  
9 tion 223 or 231 of the Communications Act of 1934, chap-  
10 ter 71 (relating to obscenity) or 110 (relating to sexual  
11 exploitation of children) of title 18, United States Code,  
12 or any other Federal criminal statute.

13           (b) STATE LAW.—

14                   (1) IN GENERAL.—No State or political subdivi-  
15 sion of a State may impose civil liability for any  
16 commercial activity or other act in interstate or for-  
17 eign commerce in violation of section 4 that is incon-  
18 sistent with the treatment of that activity or act  
19 under this Act.

20                   (2) EXCEPTION.—Paragraph (1) does not  
21 preempt—

22                           (A) any civil remedy available under State  
23 or local trespass law; or

24                           (B) any Federal, State, or local criminal  
25 law, or any civil remedy available under such

1 law, relating to acts of computer fraud or abuse  
2 arising from the unauthorized transmission of  
3 unsolicited commercial e-mail messages.

4 **SEC. 12. COMMISSION STUDY INTO EFFECTS OF UNSOLIC-**  
5 **ITED BULK COMMERCIAL ELECTRONIC MAIL.**

6 Not later than 18 months after the date of enactment  
7 of this Act, the Commission shall submit to Congress a  
8 report on—

9 (1) the effectiveness of this Act in preventing or  
10 reducing the volume of unsolicited bulk commercial  
11 e-mail;

12 (2) enforcement actions taken under this Act;  
13 and

14 (3) the need, if any, for Congress to modify the  
15 provisions of this Act.

16 **SEC. 13. DEFINITIONS.**

17 In this Act:

18 (1) CHILD.—The term “child” means an indi-  
19 vidual under the age of 13.

20 (2) COMMISSION.—The term “Commission”  
21 means the Federal Trade Commission.

22 (3) DOMAIN NAME.—The term “domain name”  
23 means an alphanumeric designation which is reg-  
24 istered with or assigned by a domain name registrar,  
25 domain name registry, or other domain name reg-

1       istration authority as part of an electronic address  
2       on the Internet.

3               (4) E-MAIL ADDRESS.—

4                       (A) IN GENERAL.—The term “e-mail ad-  
5                       dress” means a destination (commonly ex-  
6                       pressed as a string of characters) to which e-  
7                       mail can be sent or delivered.

8                       (B) INCLUSION.—In the case of the Inter-  
9                       net, the term “e-mail address” may include an  
10                      e-mail address consisting of a user name or  
11                      mailbox (commonly referred to as the “local  
12                      part”) and a reference to an Internet domain  
13                      (commonly referred to as the “domain part”).

14               (5) INTERNET.—The term “Internet” means  
15               collectively the myriad of computer and tele-  
16               communications facilities, including equipment and  
17               operating software, which comprise the inter-  
18               connected world-wide network of networks that em-  
19               ploy the Transmission Control Protocol/Internet  
20               Protocol, or any predecessor or successor protocols  
21               to such protocol, to communicate information of all  
22               kinds by wire or radio.

23               (6) ISP.—The term “ISP” means a service  
24               that enables users to access content, information, e-  
25               mail, or other services offered over the Internet and

1 may also include access to proprietary content, infor-  
2 mation, and other services as part of a package of  
3 services offered to consumers. Such term does not  
4 include telecommunications services.

5 (7) SENDER.—The term “sender” when used  
6 with respect to an e-mail message—

7 (A) means the person who initiated the  
8 transmission of such message, or caused the  
9 initiation of the transmission of that message;  
10 but

11 (B) does not include—

12 (i) an ISP whose role is limited to  
13 handling, transmission, or retransmission  
14 of that message; or

15 (ii) any other person affiliated with  
16 the person who initiated or caused the  
17 transmission.

18 (8) PRE-EXISTING BUSINESS RELATIONSHIP.—  
19 The term “pre-existing business relationship” means  
20 that, before the message was transmitted—

21 (A) the sender and the recipient had a  
22 business relationship within the preceding 60  
23 months;

24 (B) the recipient requested information  
25 contained in the message; or

1           (C) the recipient was given an opportunity,  
2           by the sender, to request that the sender not  
3           transmit messages to the recipient and has not  
4           made such a request.

5           (9) RECIPIENT.—The term “recipient” when  
6           used with respect to an e-mail message means any  
7           addressee of that message.

8           (10) COMMERCIAL E-MAIL MESSAGE.—The  
9           term “commercial e-mail message” means an e-mail  
10          message the primary purpose of which is to propose  
11          a commercial transaction or to advertise a commer-  
12          cial product or service. An e-mail message shall not  
13          be considered to be a commercial e-mail message  
14          solely because it includes a reference to a commer-  
15          cial entity.

16          (11) UNSOLICITED COMMERCIAL E-MAIL MES-  
17          SAGE.—The term “unsolicited commercial e-mail  
18          message” means any commercial e-mail message  
19          sent with the intent that the message be received by  
20          a recipient with whom the sender does not have a  
21          pre-existing business or personal relationship.

22          (12) UNSOLICITED BULK COMMERCIAL E-MAIL  
23          MESSAGE.—The term “unsolicited bulk commercial  
24          e-mail message” means at least 50 substantially  
25          identical unsolicited commercial e-mail messages

1        whether sent simultaneously, in packets of less than  
2        50, or individually.

3 **SEC. 14. EFFECTIVE DATE.**

4        This Act shall take effect 90 days after the date of  
5 enactment.

○