

108TH CONGRESS
1ST SESSION

H. R. 1933

To reduce unsolicited commercial electronic mail and to protect children from sexually oriented advertisements.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2003

Ms. LOFGREN (for herself, Mrs. TAUSCHER, Mr. DEFAZIO, Mr. FRANK of Massachusetts, and Ms. HARMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reduce unsolicited commercial electronic mail and to protect children from sexually oriented advertisements.

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.**

4 This Act may be cited as the “Restrict and Eliminate
5 the Delivery of Unsolicited Commercial Electronic Mail or
6 Spam Act of 2003” or the “REDUCE Spam Act of
7 2003”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **COMMERCIAL ELECTRONIC MAIL MES-**
4 **SAGE.**—The term “commercial electronic mail mes-

5 sage” means any electronic mail message the pri-

6 mary purpose of which is the commercial advertise-

7 ment or promotion of a commercial product or serv-

8 ice. An electronic mail message shall not be consid-

9 ered to be a commercial electronic mail message

10 solely because such message includes a reference to

11 a commercial entity that serves to identify the send-

12 er or a reference or link to an Internet website oper-

13 ated for a commercial purpose. An electronic mail

14 message shall not be considered to be a commercial

15 electronic mail message if the sender has established

16 a personal relationship with the recipient.

17 (2) **COMMISSION.**—The term “Commission”

18 means the Federal Trade Commission.

19 (3) **ELECTRONIC MAIL ADDRESS.**—

20 (A) **IN GENERAL.**—The term “electronic

21 mail address” means a destination (commonly

22 expressed as a string of characters) to which an

23 electronic mail message can be sent or deliv-

24 ered.

25 (B) **INCLUSION.**—In the case of the Inter-

26 net, the term “electronic mail address” may in-

1 clude an electronic mail address consisting of a
2 user name or mailbox (commonly referred to as
3 the “local part”) and a reference to an Internet
4 domain (commonly referred to as the “domain
5 part”).

6 (4) FTC ACT.—The term “FTC Act” means
7 the Federal Trade Commission Act (15 U.S.C. 41 et
8 seq.).

9 (5) HEADER INFORMATION.—The term “header
10 information” means the source, destination, and
11 routing information attached to an electronic mail
12 message, including the originating domain name and
13 originating electronic mail address.

14 (6) INITIATE.—The term “initiate”, when used
15 with respect to a commercial electronic mail mes-
16 sage, means to originate such message or to procure
17 the transmission of such message, either directly or
18 through an agent, but shall not include actions that
19 constitute routine conveyance of such message by a
20 provider of Internet access service. For purposes of
21 this Act, more than 1 person may be considered to
22 have initiated the same commercial electronic mail
23 message.

1 (7) INTERNET.—The term “Internet” has the
2 meaning given that term in section 231(e)(3) of the
3 Communications Act of 1934 (47 U.S.C. 231(e)(3)).

4 (8) INTERNET ACCESS SERVICE.—The term
5 “Internet access service” has the meaning given that
6 term in section 231(e)(4) of the Communications
7 Act of 1934 (47 U.S.C. 231(e)(4)).

8 (9) PRE-EXISTING BUSINESS RELATIONSHIP.—
9 The term “pre-existing business relationship”, when
10 used with respect to a commercial electronic mail
11 message, means that either of the following cir-
12 cumstances exist:

13 (A) PREVIOUS BUSINESS TRANSACTION.—

14 (i) Within the 5-year period ending
15 upon receipt of a commercial electronic
16 mail message, there has been a business
17 transaction between the sender and the re-
18 cipient, including a transaction involving
19 the provision, free of charge, of informa-
20 tion, goods, or services requested by the re-
21 cipient; and

22 (ii) the recipient was, at the time of
23 such transaction or thereafter, provided a
24 clear and conspicuous notice of an oppor-
25 tunity not to receive further commercial

1 electronic mail messages from the sender
2 and has not exercised such opportunity.

3 (B) OPT IN.—The recipient has given the
4 sender permission to initiate commercial elec-
5 tronic mail messages to the electronic mail ad-
6 dress of the recipient and has not subsequently
7 revoked such permission.

8 If a sender operates through separate lines of busi-
9 ness or divisions and holds itself out to the recipient
10 as that particular line of business or division, then
11 such line of business or division shall be treated as
12 the sender for purposes of this paragraph.

13 (10) RECIPIENT.—The term “recipient”, when
14 used with respect to a commercial electronic mail
15 message, means the addressee of such message.

16 (11) SENDER.—The term “sender”, when used
17 with respect to a commercial electronic mail mes-
18 sage, means the person who initiates such message.
19 The term “sender” does not include a provider of
20 Internet access service whose role with respect to
21 electronic mail messages is limited to handling,
22 transmitting, retransmitting, or relaying such mes-
23 sages.

24 (12) UNSOLICITED COMMERCIAL ELECTRONIC
25 MAIL MESSAGE.—The term “unsolicited commercial

1 electronic mail message” means any commercial
2 electronic mail message that meets both of the fol-
3 lowing requirements:

4 (A) The electronic mail message is ad-
5 dressed to a recipient with whom the sender
6 does not have a pre-existing business relation-
7 ship.

8 (B) The electronic mail message is not
9 sent at the request of, or with the express con-
10 sent of, the recipient.

11 **SEC. 3. COMMERCIAL ELECTRONIC MAIL CONTAINING**
12 **FRAUDULENT HEADER OR ROUTING INFOR-**
13 **MATION.**

14 (a) IN GENERAL.—Chapter 63 of title 18, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

17 **“§1351. Unsolicited commercial electronic mail con-**
18 **taining fraudulent header information**

19 “(a) Whoever initiates the transmission of any unso-
20 licited commercial electronic mail message, with knowledge
21 and intent that the message contains or is accompanied
22 by header information that is false or materially mis-
23 leading, shall be fined or imprisoned for not more than
24 1 year, or both, under this title.

1 (2) ADULT ADVERTISEMENTS.—In the case of
2 an unsolicited commercial electronic mail message
3 that contains material that may only be viewed, pur-
4 chased, rented, leased, or held in possession by an
5 individual 18 years of age and older—

6 (A) an identification that complies with the
7 standards adopted by the Internet Engineering
8 Task Force for identification of adult-oriented
9 unsolicited commercial electronic mail messages;
10 or

11 (B) in the case of the absence of such
12 standards, “ADV:ADLT” as the first eight
13 characters.

14 (b) RETURN ADDRESS REQUIREMENTS.—

15 (1) ESTABLISHMENT.—It shall be unlawful for
16 any person to initiate the transmission of an unsolic-
17 ited commercial electronic mail message to an elec-
18 tronic mail address within the United States, unless
19 the sender establishes a valid sender-operated return
20 electronic mail address where the recipient may no-
21 tify the sender not to send any further commercial
22 electronic mail messages.

23 (2) INCLUDED STATEMENT.—All unsolicited
24 commercial electronic mail messages subject to this
25 subsection shall include a statement informing the

1 recipient of the valid return electronic mail address
2 referred to in paragraph (1).

3 (3) PROHIBITION OF SENDING AFTER OBJEC-
4 TION.—Upon notification or confirmation by a re-
5 cipient of his or her request not to receive any fur-
6 ther unsolicited commercial electronic mail messages,
7 it shall be unlawful for a person, or anyone acting
8 on that person's behalf, to send any unsolicited com-
9 mercial electronic mail message to that recipient.
10 Such a request shall be deemed to terminate a pre-
11 existing business relationship for purposes of deter-
12 mining whether subsequent messages are unsolicited
13 commercial electronic mail messages.

14 (c) HEADER AND SUBJECT HEADING REQUIRE-
15 MENTS.—

16 (1) FALSE OR MISLEADING HEADER INFORMA-
17 TION.—It shall be unlawful for any person to initiate
18 the transmission of an unsolicited commercial elec-
19 tronic mail message that such person knows, or rea-
20 sonably should know, contains or is accompanied by
21 header information that is false or materially mis-
22 leading.

23 (2) DECEPTIVE SUBJECT HEADINGS.—It shall
24 be unlawful for any person to initiate the trans-
25 mission of an unsolicited commercial electronic mail

1 message with a subject heading that such person
2 knows, or reasonably should know, is likely to mis-
3 lead a recipient, acting reasonably under the cir-
4 cumstances, about a material fact regarding the con-
5 tents or subject matter of the message.

6 (d) AFFIRMATIVE DEFENSE.—A person who violates
7 subsection (a) or (b) shall not be liable if—

8 (1)(A) the person has established and imple-
9 mented, with due care, reasonable practices and pro-
10 cedures to effectively prevent such violations; and

11 (B) the violation occurred despite good faith ef-
12 forts to maintain compliance with such practices and
13 procedures; or

14 (2) within the 2-day period ending upon the ini-
15 tiation of the transmission of the unsolicited com-
16 mercial electronic mail message in violation of sub-
17 section (a) or (b), such person initiated the trans-
18 mission of such message, or one substantially similar
19 to it, to less than 1,000 electronic mail addresses.

20 **SEC. 5. ENFORCEMENT.**

21 (a) IN GENERAL.—Section 4 of this Act shall be en-
22 forced by the Commission under the FTC Act. For pur-
23 poses of such Commission enforcement, a violation of this
24 Act shall be treated as a violation of a rule under section

1 18 (15 U.S.C. 57a) of the FTC Act prohibiting an unfair
2 or deceptive act or practice.

3 (b) RULEMAKING.—Within 30 days after the date of
4 enactment of this Act, the Commission shall institute a
5 rulemaking proceeding concerning enforcement of this
6 Act. The rules adopted by the Commission shall prevent
7 violations of section 4 of this Act in the same manner,
8 by the same means, and with the same jurisdiction, pow-
9 ers, and duties as though all applicable terms and provi-
10 sions of the FTC Act were incorporated into and made
11 a part of this section, except that the rules shall also in-
12 clude—

13 (1) procedures to minimize the burden of sub-
14 mitting a complaint to the Commission concerning a
15 violation of section 4 of this Act, including proce-
16 dures to allow the electronic submission of com-
17 plaints to the Commission;

18 (2) civil penalties for violations of section 4 of
19 this Act in an amount sufficient to effectively deter
20 future violations and procedures to collect such pen-
21 alties if the Commission determines that a violation
22 of section 4 of this Act has occurred;

23 (3) procedures for the Commission to grant a
24 reward of not less than 20 percent of the total civil
25 penalty imposed to the first person that—

1 (A) identifies the person in violation of sec-
2 tion 4 of this Act; and

3 (B) supplies information that leads to the
4 successful collection of a civil penalty by the
5 Commission; and

6 (4) civil penalties for knowingly submitting a
7 false complaint to the Commission.

8 (c) REGULATIONS.—Not later than 180 days after
9 the date of enactment of this Act, the Commission shall
10 conclude the rulemaking proceeding initiated under sub-
11 section (b) and shall prescribe implementing regulations.

12 **SEC. 6. PRIVATE RIGHT OF ACTION.**

13 (a) ACTION AUTHORIZED.—A recipient of an unsolic-
14 ited commercial electronic mail message, or a provider of
15 Internet access service, adversely affected by a violation
16 of section 4 may bring a civil action in any district court
17 of the United States with jurisdiction over the defendant
18 to—

19 (1) enjoin further violation by the defendant; or

20 (2) recover damages in an amount equal to—

21 (A) actual monetary loss incurred by the
22 recipient or provider of Internet access service
23 as a result of such violation; or

24 (B) at the discretion of the court, the
25 amount determined under subsection (b).

1 (b) **STATUTORY DAMAGES.**—For purposes of sub-
2 section (a)(2)(B), the amount determined under this sub-
3 section is the amount calculated by multiplying the num-
4 ber of willful, knowing, or negligent violations by an
5 amount, in the discretion of the court, of up to \$10. In
6 determining the per-violation penalty under this sub-
7 section, the court shall take into account the degree of
8 culpability, any history of prior such conduct, ability to
9 pay, the extent of economic gain resulting from the viola-
10 tion, and such other matters as justice may require.

11 (c) **ATTORNEY FEES.**—In any action brought pursu-
12 ant to subsection (a), the court may, in its discretion, re-
13 quire an undertaking for the payment of the costs of such
14 action, and assess reasonable costs, including reasonable
15 attorneys' fees, against any party.

16 **SEC. 7. INTERNET ACCESS SERVICE PROVIDERS.**

17 Nothing in this Act shall be construed—

18 (1) to enlarge or diminish the application of
19 chapter 121 of title 18, relating to when a provider
20 of Internet access service may disclose customer
21 communications or records;

22 (2) to require a provider of Internet access
23 service to block, transmit, route, relay, handle, or
24 store certain types of electronic mail messages;

1 (3) to prevent or limit, in any way, a provider
2 of Internet access service from adopting a policy re-
3 garding commercial electronic mail messages, includ-
4 ing a policy of declining to transmit certain types of
5 commercial electronic mail messages, or from enforce-
6 ing such policy through technical means, through
7 contract, or pursuant to any other provision of Fed-
8 eral, State, or local criminal or civil law; or

9 (4) to render lawful any such policy that is un-
10 lawful under any other provision of law.

11 **SEC. 8. EFFECT ON OTHER LAWS.**

12 (a) FEDERAL LAW.—Nothing in this Act shall be
13 construed to impair the enforcement of section 223 or 231
14 of the Communications Act of 1934, chapter 71 (relating
15 to obscenity) or 110 (relating to sexual exploitation of chil-
16 dren) of title 18, United States Code, or any other Federal
17 criminal statute.

18 (b) STATE LAW.—No State or local government may
19 impose any civil liability for commercial activities or ac-
20 tions in interstate or foreign commerce in connection with
21 an activity or action described in section 4 of this Act that
22 is inconsistent with the treatment of such activities or ac-
23 tions under this Act, except that this Act shall not pre-
24 empt any civil remedy under State trespass, contract, or
25 tort law or under any provision of Federal, State, or local

1 criminal law or any civil remedy available under such law
2 that relates to acts of computer fraud or abuse arising
3 from the unauthorized transmission of unsolicited com-
4 mercial electronic mail messages.

5 **SEC. 9. FTC STUDY.**

6 Not later than 24 months after the date of enactment
7 of this Act, the Commission, in consultation with appro-
8 priate agencies, shall submit a report to the Congress that
9 provides a detailed analysis of the effectiveness and en-
10 forcement of the provisions of this Act and the need, if
11 any, for Congress to modify such provisions.

12 **SEC. 10. EFFECTIVE DATE.**

13 The provisions of this Act shall take effect 180 days
14 after the date of the enactment of this Act, except that
15 subsections (b) and (d) of section 5 shall take effect upon
16 the date of the enactment of this Act.

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