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H. R. 95

To protect individuals, families, and Internet service providers from unsolicited and unwanted electronic mail.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2001

Mr. GREEN of Texas introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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 protect individuals, families, and Internet service providers from unsolicited and unwanted electronic 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.**

4 This Act may be cited as the “Unsolicited Commer-
5 cial Electronic Mail Act of 2001”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

7 (a) FINDINGS.—The Congress finds the following:

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

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

12 (3) Unsolicited commercial electronic mail can
13 be an important mechanism through which busi-
14 nesses advertise and attract customers in the online
15 environment.

16 (4) The receipt of unsolicited commercial elec-
17 tronic mail may result in costs to recipients who
18 cannot refuse to accept such mail and who incur
19 costs for the storage of such mail, or for the time
20 spent accessing, reviewing, and discarding such mail,
21 or for both.

22 (5) Unsolicited commercial electronic mail may
23 impose significant monetary costs on Internet access
24 services, businesses, and educational and nonprofit
25 institutions that carry and receive such mail, as

1 there is a finite volume of mail that such providers,
2 businesses, and institutions can handle without fur-
3 ther investment. The sending of such mail is increas-
4 ingly and negatively affecting the quality of service
5 provided to customers of Internet access service, and
6 shifting costs from the sender of the advertisement
7 to the Internet access service.

8 (6) While some senders of unsolicited commer-
9 cial electronic mail messages provide simple and reli-
10 able ways for recipients to reject (or “opt-out” of)
11 receipt of unsolicited commercial electronic mail
12 from such senders in the future, other senders pro-
13 vide no such “opt-out” mechanism, or refuse to
14 honor the requests of recipients not to receive elec-
15 tronic mail from such senders in the future, or both.

16 (7) An increasing number of senders of unsolic-
17 ited commercial electronic mail purposefully disguise
18 the source of such mail so as to prevent recipients
19 from responding to such mail quickly and easily.

20 (8) Many senders of unsolicited commercial
21 electronic mail collect or harvest electronic mail ad-
22 dresses of potential recipients without the knowledge
23 of those recipients and in violation of the rules or
24 terms of service of the database from which such ad-
25 dresses are collected.

1 (9) Because recipients of unsolicited commercial
2 electronic mail are unable to avoid the receipt of
3 such mail through reasonable means, such mail may
4 invade the privacy of recipients.

5 (10) In legislating against certain abuses on the
6 Internet, Congress should be very careful to avoid
7 infringing in any way upon constitutionally protected
8 rights, including the rights of assembly, free speech,
9 and privacy.

10 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
11 POLICY.—On the basis of the findings in subsection (a),
12 the Congress determines that—

13 (1) there is substantial government interest in
14 regulation of unsolicited commercial electronic mail;

15 (2) Internet service providers should not be
16 compelled to bear the costs of unsolicited commercial
17 electronic mail without compensation from the send-
18 er; and

19 (3) recipients of unsolicited commercial elec-
20 tronic mail have a right to decline to receive or have
21 their children receive unsolicited commercial elec-
22 tronic mail.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) CHILDREN.—The term “children” includes
2 natural children, stepchildren, adopted children, and
3 children who are wards of or in custody of the par-
4 ent, who have not attained the age of 18 and who
5 reside with the parent or are under his or her care,
6 custody, or supervision.

7 (2) COMMERCIAL ELECTRONIC MAIL MES-
8 SAGE.—The term “commercial electronic mail mes-
9 sage” means any electronic mail message that pri-
10 marily advertises or promotes the commercial avail-
11 ability of a product or service for profit or invites
12 the recipient to view content on an Internet web site
13 that is operated for a commercial purpose. An elec-
14 tronic mail message shall not be considered to be a
15 commercial electronic mail message solely because
16 such message includes a reference to a commercial
17 entity that serves to identify the initiator.

18 (3) COMMISSION.—The term “Commission”
19 means the Federal Trade Commission.

20 (4) DOMAIN NAME.—The term “domain name”
21 means any alphanumeric designation which is reg-
22 istered with or assigned by any domain name reg-
23 istrar, domain name registry, or other domain name
24 registration authority as part of an electronic ad-
25 dress on the Internet.

1 (5) ELECTRONIC MAIL ADDRESS.—

2 (A) IN GENERAL.—The term “electronic
3 mail address” means a destination (commonly
4 expressed as a string of characters) to which
5 electronic mail can be sent or delivered.

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

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

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

20 (8) INITIATE.—The term “initiate”, when used
21 with respect to a commercial electronic mail mes-
22 sage, means to originate such message or to procure
23 the transmission of such message.

24 (9) INITIATOR.—The term “initiator”, when
25 used with respect to a commercial electronic mail

1 message, means the person who initiates such mes-
2 sage. Such term does not include a provider of an
3 Internet access service whose role with respect to the
4 message is limited to handling, transmitting, re-
5 transmitting, or relaying the message.

6 (10) PRE-EXISTING BUSINESS RELATION-
7 SHIP.—The term “pre-existing business relation-
8 ship” means, when used with respect to the initiator
9 and recipient of a commercial electronic mail mes-
10 sage, that either of the following circumstances exist:

11 (A) PREVIOUS BUSINESS TRANSACTION.—

12 (i) Within the 5-year period ending
13 upon receipt of such message, there has
14 been a business transaction between the
15 initiator and the recipient (including a
16 transaction involving the provision, free of
17 charge, of information requested by the re-
18 cipient, of goods, or of services); and

19 (ii) the recipient was, at the time of
20 such transaction or thereafter, provided a
21 clear and conspicuous notice of an oppor-
22 tunity not to receive further messages from
23 the initiator and has not exercised such op-
24 portunity.

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

6 (11) RECIPIENT.—The term “recipient”, when
 7 used with respect to a commercial electronic mail
 8 message, means the addressee of such message.

9 (12) UNSOLICITED COMMERCIAL ELECTRONIC
 10 MAIL MESSAGE.—The term “unsolicited commercial
 11 electronic mail message” means any commercial
 12 electronic mail message that is sent by the initiator
 13 to a recipient with whom the initiator does not have
 14 a pre-existing business relationship.

15 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
 16 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
 17 **ULENT ROUTING INFORMATION.**

18 Section 1030 of title 18, United States Code, is
 19 amended—

20 (1) in subsection (a)(5)—

21 (A) in subparagraph (B), by striking “or”
 22 at the end;

23 (B) in subparagraph (C), by inserting “or”
 24 after the semicolon at the end; and

1 (C) by adding at the end the following new
2 subparagraph:

3 “(D) intentionally initiates the transmission of
4 any unsolicited commercial electronic mail message
5 to a protected computer in the United States with
6 knowledge that any domain name, header informa-
7 tion, date or time stamp, originating electronic mail
8 address, or other information identifying the
9 initiator or the routing of such message, that is con-
10 tained in or accompanies such message, is false or
11 inaccurate;”;

12 (2) in subsection (c)(2)(A)—

13 (A) by inserting “(i)” after “in the case
14 of”; and

15 (B) by inserting before “; and” the fol-
16 lowing: “, or (ii) an offense under subsection
17 (a)(5)(D) of this section”; and

18 (3) in subsection (e)—

19 (A) by striking “and” at the end of para-
20 graph (8);

21 (B) by striking the period at the end of
22 paragraph (9) and inserting a semicolon; and

23 (C) by adding at the end the following new
24 paragraph:

1 “(10) the terms ‘initiate’, ‘initiator’, ‘unsolicited
2 commercial electronic mail message’, and ‘domain
3 name’ have the meanings given such terms in section
4 3 of the Unsolicited Commercial Electronic Mail Act
5 of 2001.”.

6 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**
7 **MERCIAL ELECTRONIC MAIL.**

8 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
9 SAGES.—

10 (1) INCLUSION OF RETURN ADDRESS IN COM-
11 MERCIAL ELECTRONIC MAIL.—It shall be unlawful
12 for any person to initiate the transmission of a com-
13 mercial electronic mail message to any person within
14 the United States unless such message contains a
15 valid electronic mail address, conspicuously dis-
16 played, to which a recipient may send a reply to the
17 initiator to indicate a desire not to receive any fur-
18 ther messages.

19 (2) PROHIBITION OF TRANSMISSION OF UNSO-
20 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
21 JECTION.—If a recipient makes a request to a per-
22 son to be removed from all distribution lists under
23 the control of such person, it shall be unlawful for
24 such person to initiate the transmission of an unso-
25 olicited commercial electronic mail message to such

1 a recipient within the United States after the expira-
2 tion, after receipt of such request, of a reasonable
3 period of time for removal from such lists. Such a
4 request shall be deemed to terminate a pre-existing
5 business relationship for purposes of determining
6 whether subsequent messages are unsolicited com-
7 mercial electronic mail messages.

8 (3) INCLUSION OF IDENTIFIER AND OPT-OUT IN
9 UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It
10 shall be unlawful for any person to initiate the
11 transmission of any unsolicited commercial electronic
12 mail message to any person within the United States
13 unless the message provides, in a manner that is
14 clear and conspicuous to the recipient—

15 (A) identification that the message is an
16 unsolicited commercial electronic mail message;
17 and

18 (B) notice of the opportunity under para-
19 graph (2) not to receive further unsolicited
20 commercial electronic mail messages from the
21 initiator.

22 (b) ENFORCEMENT OF POLICIES BY INTERNET AC-
23 CESS SERVICE PROVIDERS.—

24 (1) PROHIBITION OF TRANSMISSIONS IN VIOLA-
25 TION OF POSTED POLICY.—It shall be unlawful for

1 any person to initiate the transmission of an unsolic-
2 ited commercial electronic mail message to any per-
3 son within the United States in violation of a policy
4 governing the use of the equipment of a provider of
5 Internet access service for transmission of unsolic-
6 ited commercial electronic mail messages that meets
7 the requirements of paragraph (2).

8 (2) REQUIREMENTS FOR ENFORCEABILITY.—

9 The requirements under this paragraph for a policy
10 regarding unsolicited commercial electronic mail
11 messages are as follows:

12 (A) CLARITY.—The policy shall explicitly
13 provide that compliance with a rule or set of
14 rules is a condition of use of the equipment of
15 a provider of Internet access service to deliver
16 commercial electronic mail messages.

17 (B) PUBLICLY AVAILABILITY.—The policy
18 shall be publicly available by at least one of the
19 following methods:

20 (i) WEB POSTING.—The policy is
21 clearly and conspicuously posted on a
22 World Wide Web site of the provider of
23 Internet access service, which has an Inter-
24 net domain name that is identical to the
25 Internet domain name of the electronic

1 mail address to which the rule or set of
2 rules applies.

3 (ii) NOTIFICATION IN COMPLIANCE
4 WITH TECHNOLOGICAL STANDARD.—Such
5 policy is made publicly available by the
6 provider of Internet access service in ac-
7 cordance with a technological standard
8 adopted by an appropriate Internet stand-
9 ards setting body (such as the Internet
10 Engineering Task Force) and recognized
11 by the Commission by rule as a fair stand-
12 ard.

13 (C) INTERNAL OPT-OUT LIST.—If the pol-
14 icy of a provider of Internet access service re-
15 quires compensation specifically for the trans-
16 mission of unsolicited commercial electronic
17 mail messages into its system, the provider
18 shall provide an option to its subscribers not to
19 receive any unsolicited commercial electronic
20 mail messages, except that such option is not
21 required for any subscriber who has agreed to
22 receive unsolicited commercial electronic mail
23 messages in exchange for discounted or free
24 Internet access service.

1 (3) OTHER ENFORCEMENT.—Nothing in this
2 Act shall be construed to prevent or limit, in any
3 way, a provider of Internet access service from en-
4 forcing, pursuant to any remedy available under any
5 other provision of Federal, State, or local criminal or
6 civil law, a policy regarding unsolicited commercial
7 electronic mail messages.

8 (c) PROTECTION OF INTERNET ACCESS SERVICE
9 PROVIDERS.—

10 (1) GOOD FAITH EFFORTS TO BLOCK TRANS-
11 MISSIONS.—A provider of Internet access service
12 shall not be liable, under any Federal, State, or local
13 civil or criminal law, for any action it takes in good
14 faith to block the transmission or receipt of unsolic-
15 ited commercial electronic mail messages.

16 (2) INNOCENT RETRANSMISSION.—A provider
17 of Internet access service the facilities of which are
18 used only to handle, transmit, retransmit, or relay
19 an unsolicited commercial electronic mail message
20 transmitted in violation of subsection (a) shall not
21 be liable for any harm resulting from the trans-
22 mission or receipt of such message unless such pro-
23 vider permits the transmission or retransmission of
24 such message with actual knowledge that the trans-

1 mission is prohibited by subsection (a) or subsection
2 (b)(1).

3 **SEC. 6. ENFORCEMENT.**

4 (a) GOVERNMENTAL ORDER.—

5 (1) NOTIFICATION OF ALLEGED VIOLATION.—

6 The Commission shall send a notification of alleged
7 violation to any person who violates section 5 if—

8 (A) a recipient or a provider of Internet
9 access service notifies the Commission, in such
10 form and manner as the Commission shall de-
11 termine, that a transmission has been received
12 in violation of section 5; or

13 (B) the Commission has other reason to
14 believe that such person has violated or is vio-
15 lating section 5.

16 (2) TERMS OF NOTIFICATION.—A notification
17 of alleged violation shall—

18 (A) identify the violation for which the no-
19 tification was issued;

20 (B) direct the initiator to refrain from fur-
21 ther violations of section 5;

22 (C) expressly prohibit the initiator (and
23 the agents or assigns of the initiator) from fur-
24 ther initiating unsolicited commercial electronic
25 mail messages in violation of section 5 to the

1 designated recipients or providers of Internet
2 access service, effective on the third day (ex-
3 cluding Saturdays, Sundays, and legal public
4 holidays) after receipt of the notification; and

5 (D) direct the initiator (and the agents or
6 assigns of the initiator) to delete immediately
7 the names and electronic mail addresses of the
8 designated recipients or providers from all mail-
9 ing lists owned or controlled by the initiator (or
10 such agents or assigns) and prohibit the
11 initiator (and such agents or assigns) from the
12 sale, lease, exchange, license, or other trans-
13 action involving mailing lists bearing the names
14 and electronic mail addresses of the designated
15 recipients or providers.

16 (3) COVERAGE OF MINOR CHILDREN BY NOTIFI-
17 CATION.—Upon request of a recipient of an elec-
18 tronic mail message transmitted in violation of sec-
19 tion 5, the Commission shall include in the notifica-
20 tion of alleged violation the names and electronic
21 mail addresses of any child of the recipient.

22 (4) ENFORCEMENT OF NOTIFICATION TERMS.—

23 (A) COMPLAINT.—If the Commission be-
24 lieves that the initiator (or the agents or as-
25 signs of the initiator) has failed to comply with

1 the terms of a notification issued under this
2 subsection, the Commission shall serve upon the
3 initiator (or such agents or assigns), by reg-
4 istered or certified mail, a complaint stating the
5 reasons for its belief and request that any re-
6 sponse thereto be filed in writing with the Com-
7 mission within 15 days after the date of such
8 service.

9 (B) HEARING AND ORDER.—If the Com-
10 mission, after an opportunity for a hearing on
11 the record, determines that the person upon
12 whom the complaint was served violated the
13 terms of the notification, the Commission shall
14 issue an order directing that person to comply
15 with the terms of the notification.

16 (C) PRESUMPTION.—For purposes of a de-
17 termination under subparagraph (B), receipt of
18 any transmission in violation of a notification of
19 alleged violation 30 days (excluding Saturdays,
20 Sundays, and legal public holidays) or more
21 after the effective date of the notification shall
22 create a rebuttable presumption that such
23 transmission was sent after such effective date.

24 (5) ENFORCEMENT BY COURT ORDER.—Any
25 district court of the United States within the juris-

1 diction of which any transmission is sent or received
2 in violation of a notification given under this sub-
3 section shall have jurisdiction, upon application by
4 the Attorney General, to issue an order commanding
5 compliance with such notification. Failure to observe
6 such order may be punishable by the court as con-
7 tempt thereof.

8 (b) PRIVATE RIGHT OF ACTION.—

9 (1) ACTIONS AUTHORIZED.—A recipient or a
10 provider of Internet access service may, if otherwise
11 permitted by the laws or rules of court of a State,
12 bring in an appropriate court of that State, or may
13 bring in an appropriate Federal court if such laws
14 or rules do not so permit, either or both of the fol-
15 lowing actions:

16 (A) An action based on a violation of sec-
17 tion 5 to enjoin such violation.

18 (B) An action to recover for actual mone-
19 tary loss from such a violation in an amount
20 equal to the greatest of—

21 (i) the amount of such actual mone-
22 tary loss; or

23 (ii) \$500 for each such violation, not
24 to exceed a total of \$50,000.

1 (2) ADDITIONAL REMEDIES.—If the court finds
2 that the defendant willfully, knowingly, or repeatedly
3 violated section 5, the court may, in its discretion,
4 increase the amount of the award to an amount
5 equal to not more than three times the amount
6 available under paragraph (1).

7 (3) ATTORNEY FEES.—In any such action, the
8 court may, in its discretion, require an undertaking
9 for the payment of the costs of such action, and as-
10 sess reasonable costs, including reasonable attorneys'
11 fees, against any party.

12 (4) PROTECTION OF TRADE SECRETS.—At the
13 request of any party to an action brought pursuant
14 to this subsection or any other participant in such
15 an action, the court may, in its discretion, issue pro-
16 tective orders and conduct legal proceedings in such
17 a way as to protect the secrecy and security of the
18 computer, computer network, computer data, com-
19 puter program, and computer software involved in
20 order to prevent possible recurrence of the same or
21 a similar act by another person and to protect any
22 trade secrets of any such party or participant.

23 **SEC. 7. EFFECT ON OTHER LAWS.**

24 (a) FEDERAL LAW.—Nothing in this Act shall be
25 construed to impair the enforcement of section 223 or 231

1 of the Communications Act of 1934, chapter 71 (relating
2 to obscenity) or 110 (relating to sexual exploitation of chil-
3 dren) of title 18, United States Code, or any other Federal
4 criminal statute.

5 (b) STATE LAW.—No State or local government may
6 impose any civil liability for commercial activities or ac-
7 tions in interstate or foreign commerce in connection with
8 an activity or action described in section 5 of this Act that
9 is inconsistent with the treatment of such activities or ac-
10 tions under this Act, except that this Act shall not pre-
11 empt any civil remedy under State trespass or contract
12 law or under any provision of Federal, State, or local
13 criminal law or any civil remedy available under such law
14 that relates to acts of computer fraud or abuse arising
15 from the unauthorized transmission of unsolicited com-
16 mercial electronic mail messages.

17 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
18 **ELECTRONIC MAIL.**

19 Not later than 18 months after the date of the enact-
20 ment of this Act, the Federal Trade Commission shall sub-
21 mit a report to the Congress that provides a detailed anal-
22 ysis of the effectiveness and enforcement of the provisions
23 of this Act and the need (if any) for the Congress to mod-
24 ify such provisions.

1 **SEC. 9. SEPARABILITY.**

2 If any provision of this Act or the application thereof
3 to any person or circumstance is held invalid, the remain-
4 der of this Act and the application of such provision to
5 other persons or circumstances shall not be affected.

6 **SEC. 10. EFFECTIVE DATE.**

7 The provisions of this Act shall take effect 90 days
8 after the date of the enactment of this Act.

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