

105TH CONGRESS  
2D SESSION

# H. R. 4176

To amend the Communications Act of 1934 to protect consumers against ‘spamming’, ‘slamming’, and ‘cramming’, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. MARKEY introduced the following bill; which was referred to the  
Committee on Commerce

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## A BILL

To amend the Communications Act of 1934 to protect consumers against ‘spamming’, ‘slamming’, and ‘cramming’, and for other purposes.

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 “Digital Jamming Act  
5       of 1998”.

1           **TITLE I—PREVENTION OF**  
2                           **SPAMMING**

3   **SEC. 101. EXTENSION OF JUNK FAX REMEDIES TO COM-**  
4                           **MERCIAL EMAIL**

5           Section 227 of the Communications Act of 1934 (47  
6   U.S.C. 227) is amended—

7                   (1) in subsection (a), by adding at the end the  
8           following new paragraphs:

9                   “(5) The term ‘unsolicited electronic mail mes-  
10           sage’ means any electronic mail message that is ad-  
11           dressed and sent to a recipient with whom the  
12           initiator does not have an existing relationship and  
13           has been sent by the initiator without the express  
14           consent of the recipient.

15                   “(6) The term ‘unsolicited commercial elec-  
16           tronic mail message’ means any unsolicited elec-  
17           tronic mail message that is sent for the purpose of  
18           encouraging the purchase or rental of, or investment  
19           in, property, goods, or services.

20                   “(7) The term ‘electronic mail service provider’  
21           means any entity that provides subscribers the abil-  
22           ity to send or receive electronic mail.

23                   “(8) The term ‘published policy’ means, with  
24           respect to an electronic mail service provider’s policy  
25           on unsolicited electronic mail messages, that such

1 policy is available upon request in written form at no  
2 charge or is displayed conspicuously through an on-  
3 line notice on the Internet home page of the elec-  
4 tronic mail service provider.”;

5 (2) in subsection (c)(3)—

6 (A) by striking “If the Commission deter-  
7 mines to require such a database,” and insert-  
8 ing “If the Commission determines to require  
9 such a database pursuant to paragraph (2), or  
10 at any time subsequent to the proceeding re-  
11 quired by paragraph (1) determines that a  
12 database is required to protect subscribers from  
13 telephone solicitations or unsolicited electronic  
14 mail messages,”;

15 (B) by striking “and” at the end of sub-  
16 paragraph (K);

17 (C) by striking the period at the end of  
18 subparagraph (L) and inserting a semicolon;  
19 and

20 (D) by adding at the end the following new  
21 subparagraphs:

22 “(M) require each electronic mail service  
23 provider, in accordance with regulations pre-  
24 scribed by the Commission, to inform subscrib-  
25 ers for electronic mail service of the opportunity

1 to provide notification, in accordance with such  
2 regulations, that such subscribers objects to re-  
3 ceiving unsolicited commercial electronic mail  
4 messages; and

5 “(N) specify the methods by which each  
6 electronic mail service subscriber shall be in-  
7 formed, by the electronic mail service provider  
8 that provides such service to such subscriber, of  
9 (i) the subscriber’s right to give or revoke a no-  
10 tification of objection under subparagraph (M),  
11 and (ii) the methods by which such right may  
12 be exercised by the subscriber.”;

13 (3) by redesignating subsections (e) and (f) as  
14 subsections (f) and (g), respectively;

15 (4) by inserting after subsection (d) the follow-  
16 ing new subsection:

17 “(e) RESTRICTIONS ON THE USE OF UNSOLICITED  
18 COMMERCIAL ELECTRONIC MAIL MESSAGES.—

19 “(1) INFORMATION ABOUT SENDER; RIGHT TO  
20 REPLY.—It shall be unlawful for any person within  
21 the United States—

22 “(A) to initiate an unsolicited commercial  
23 electronic mail message unless such message  
24 contains—

1 “(i) the name, street address, elec-  
2 tronic mail address, and telephone number  
3 of the person who initiates transmission of  
4 the message;

5 “(ii) the name, street address, elec-  
6 tronic mail address, and telephone number  
7 of the person who created the content of  
8 the message;

9 “(iii) a reply electronic mail address,  
10 conspicuously displayed, where recipients  
11 may send a reply to indicate a desire not  
12 to receive any further messages; or

13 “(iv) information on how recipients  
14 may exercise the rights established pursu-  
15 ant to subsection (c)(3);

16 “(B) to initiate an unsolicited commercial  
17 electronic mail message to any recipient who  
18 has previously indicated a desire not to receive  
19 such messages by sending a reply described in  
20 subparagraph (A)(iii)); or

21 “(C) to initiate an unsolicited commercial  
22 electronic mail message unless such message  
23 contains Internet routing information that is  
24 accurate, is valid according to prevailing stand-

1           ards for Internet protocols, and correctly re-  
2           flects the actual message routing.

3           “(2)       ENFORCEMENT       OF       VOLUNTARY  
4       CYBERRULES REGARDING SPAMMING.—

5           “(A) PROHIBITION.—No subscriber of an  
6           electronic mail service provider shall use, or  
7           cause to be used, the electronic mail service or  
8           equipment in violation of that electronic mail  
9           service’s published policy prohibiting or restrict-  
10          ing the use of its service or equipment for the  
11          initiation of an unsolicited commercial elec-  
12          tronic mail message.

13          “(B) ENFORCEMENT BY PROVIDERS.—Any  
14          subscriber who violates subparagraph (A) for  
15          the initiation of an unsolicited commercial elec-  
16          tronic mail message shall be liable to the elec-  
17          tronic mail service provider for damages in an  
18          amount equal to \$50 for each of the provider’s  
19          subscribers to whom such message was trans-  
20          mitted.”; and

21          (5) in subsection (f)(1) (as redesignated by  
22          paragraph (3))—

23                  (A) by striking “or” at the end of subpara-  
24                  graph (C);

1 (B) by striking the period at the end of  
 2 subparagraph (D) and inserting “; or”; and

3 (C) by adding at the end the following new  
 4 subparagraph:

5 “(E) the making of unsolicited commercial  
 6 electronic mail messages.”.

## 7 **TITLE II—PREVENTION OF** 8 **SLAMMING AND CRAMMING**

### 9 **SEC. 201. LIABILITY TO SUBSCRIBERS; AUTHORITY OF** 10 **STATES.**

11 (a) AMENDMENT.—Section 258 of the Communica-  
 12 tions Act of 1934 (47 U.S.C. 258) is amended by striking  
 13 subsection (b) and inserting the following:

14 “(b) LIABILITY FOR CHARGES AFTER SLAMMING.—

15 “(1) LIABILITY.—Any telecommunications car-  
 16 rier that violates the verification procedures de-  
 17 scribed in subsection (a) and that collects charges  
 18 for telephone exchange service or telephone toll serv-  
 19 ice from a subscriber shall be liable, in accordance  
 20 with such procedures as the Commission may pre-  
 21 scribe—

22 “(A) to the carrier previously selected by  
 23 the subscriber in an amount equal to all  
 24 charges paid by such subscriber after such vio-  
 25 lation; and

1           “(B) to the subscriber in an amount equal  
 2           to twice the amount of all charges paid by such  
 3           subscriber after such violation.

4           “(2) EFFECT ON OTHER LAWS.—The remedies  
 5           provided by subsection (b) are in addition to any  
 6           other remedies available by law.

7           “(c) PROHIBITION OF AND LIABILITY FOR CRAM-  
 8           MING.—

9           “(1) PROHIBITION.—No telecommunications  
 10          carrier (including billing aggregators and service  
 11          providers) shall submit for billing on bills for tele-  
 12          communications services unauthorized services or  
 13          products.

14          “(2) LIABILITY TO SUBSCRIBER.—Any tele-  
 15          communication carrier (including billing aggregators  
 16          and service providers) that violates paragraph (1)  
 17          and collects charges for unauthorized services or  
 18          products from a subscriber shall be liable to such  
 19          subscriber in an amount equal to twice the total  
 20          amount of charges paid by such subscriber after  
 21          such violation. The remedies provided by this sub-  
 22          section are in addition to any other remedies avail-  
 23          able by law.

24          “(c) ACTIONS BY STATES.—



1           “(1) AUTHORITY OF STATES.—Whenever the  
2           attorney general of a State, or an official or agency  
3           designated by a State, has reason to believe that any  
4           person has engaged or is engaging in a pattern or  
5           practice of (A) effecting changes in a subscribers’ se-  
6           lections of a provider of telephone exchange service  
7           or telephone toll service in violation of this section  
8           or the regulations prescribed under this section, or  
9           (B) submitting for billing on bills for telecommuni-  
10          cations services, and collecting for, unauthorized  
11          services or products, shall the State may bring a  
12          civil action on behalf of its residents to enjoin such  
13          calls, an action to recover for actual monetary loss  
14          or receive \$500 in damages for each violation, or  
15          both such actions. If the court finds the defendant  
16          willfully or knowingly violated such regulations, the  
17          court may, in its discretion, increase the amount of  
18          the award to an amount equal to not more than 3  
19          times the amount available under the preceding sen-  
20          tence.

21           “(2) EXCLUSIVE JURISDICTION OF FEDERAL  
22          COURTS.—The district courts of the United States,  
23          the United States courts of any territory, and the  
24          District Court of the United States for the District  
25          of Columbia shall have exclusive jurisdiction over all

1 civil actions brought under this subsection. Upon  
2 proper application, such courts shall also have juris-  
3 diction to issue writs of mandamus, or orders afford-  
4 ing like relief, commanding the defendant to comply  
5 with the provisions of this section or regulations pre-  
6 scribed under this section, including the requirement  
7 that the defendant take such action as is necessary  
8 to remove the danger of such violation. Upon a prop-  
9 er showing, a permanent or temporary injunction or  
10 restraining order shall be granted without bond.

11 “(3) RIGHTS OF COMMISSION.—The State shall  
12 serve prior written notice of any such civil action  
13 upon the Commission and provide the Commission  
14 with a copy of its complaint, except in any case  
15 where such prior notice is not feasible, in which case  
16 the State shall serve such notice immediately upon  
17 instituting such action. The Commission shall have  
18 the right (A) to intervene in the action, (B) upon so  
19 intervening, to be heard on all matters arising there-  
20 in, and (C) to file petitions for appeal.

21 “(4) VENUE; SERVICE OF PROCESS.—Any civil  
22 action brought under this subsection in a district  
23 court of the United States may be brought in the  
24 district wherein the defendant is found or is an in-  
25 habitant or transacts business or wherein the viola-

1       tion occurred or is occurring, and process in such  
2       cases may be served in any district in which the de-  
3       fendant is an inhabitant or where the defendant may  
4       be found.

5           “(5) INVESTIGATORY POWERS.—For purposes  
6       of bringing any civil action under this subsection,  
7       nothing in this section shall prevent the attorney  
8       general of a State, or an official or agency des-  
9       ignated by a State, from exercising the powers con-  
10      ferred on the attorney general or such official by the  
11      laws of such State to conduct investigations or to  
12      administer oaths or affirmations or to compel the at-  
13      tendance of witnesses or the production of documen-  
14      tary and other evidence.

15          “(6) EFFECT ON STATE COURT PROCEED-  
16      INGS.—Nothing contained in this subsection shall be  
17      construed to prohibit an authorized State official  
18      from proceeding in State court on the basis of an al-  
19      leged violation of any general civil or criminal stat-  
20      ute of such State.

21          “(7) LIMITATION.—Whenever the Commission  
22      has instituted a civil action for violation of regula-  
23      tions prescribed under this section, no State may,  
24      during the pendency of such action instituted by the  
25      Commission, subsequently institute a civil action

1       against any defendant named in the Commission’s  
2       complaint for any violation as alleged in the Com-  
3       mission’s complaint.

4               “(8) DEFINITION.—As used in this subsection,  
5       the term ‘attorney general’ means the chief legal of-  
6       ficer of a State.”.

7       **SEC. 202. NTIA STUDY OF THIRD PARTY VERIFICATION AND**  
8               **AUTHENTICATION.**

9       (a) STUDY REQUIRED.—The National Telecommuni-  
10      cations and Information Administration of the Depart-  
11      ment of Commerce shall conduct a study of the feasibility  
12      and desirability of establishing third party verification and  
13      authentication systems for preventing illegal changes in  
14      telephone subscriber carrier selections. The study shall in-  
15      clude—

16              (1) an analysis of the cost of establishing a na-  
17      tional, independent database or clearinghouse to au-  
18      thorize and verify changes in carrier selections;

19              (2) the additional cost to carriers, per change  
20      in carrier selection, to fund the ongoing operation of  
21      such an independent database or clearinghouse;

22              (3) the cost and feasibility of implementing  
23      such databases or clearinghouses at the State level;  
24      and

1           (4) the advantages and disadvantages of utiliz-  
2           ing independent databases or clearinghouses for au-  
3           thorizing and authenticating carrier selection  
4           changes.

5           (b) REPORT REQUIRED.—Within 180 days after the  
6           date of enactment of this Act, the National Telecommuni-  
7           cations and Information Administration shall submit to  
8           the Committee on Commerce of the House of Representa-  
9           tives and Committee on Commerce, Science, and Trans-  
10          portation of the Senate the results of the study required  
11          by subsection (a).

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