

Union Calendar No. 43

107TH CONGRESS
1ST SESSION

H. R. 718

[Report No. 107-41, Parts I and II]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2001

Mrs. WILSON (for herself, Mr. GREEN of Texas, Mr. GARY MILLER of California, Mr. GOODLATTE, Mr. PICKERING, Mr. DEAL of Georgia, Mr. LARGENT, Mr. FOSSELLA, Mr. WALDEN of Oregon, Mr. BRYANT, Mr. TAUZIN, Mr. GILLMOR, Mr. FRELINGHUYSEN, Ms. CARSON of Indiana, Mr. KILDEE, Mr. ENGLISH, Mr. LEVIN, Mr. SIMMONS, Ms. ESHOO, Mr. HINCHEY, Mr. TERRY, Mr. RUSH, Mr. BONIOR, Mr. HORN, Mrs. EMERSON, Mr. ENGEL, Mrs. JO ANN DAVIS of Virginia, Ms. DEGETTE, Ms. HARMAN, Mr. MOORE, Mr. SHIMKUS, Mr. BARRETT, Mr. BOUCHER, Mr. GREENWOOD, Ms. McCARTHY of Missouri, Mr. CRAMER, Mr. SESSIONS, Mr. GORDON, Mr. SHOWS, Mr. FRANK, Ms. MCKINNEY, Mr. HOLT, Mr. SANDLIN, Mr. SAWYER, Mr. STRICKLAND, Mr. WELLER, Mr. KING, Mr. BAKER, Ms. HART, Mr. PITTS, Mr. UDALL of New Mexico, Mr. LUTHER, Mr. REYES, Ms. PELOSI, Mr. FROST, Mr. EHRLICH, Mr. BURR of North Carolina, Mr. ADERHOLT, Mr. WOLF, Mr. ISAKSON, Mrs. CUBIN, Mr. BARTON of Texas, Mr. STEARNS, Mr. OXLEY, Ms. DUNN, Mr. HASTINGS of Washington, Mr. STUPAK, and Mr. BLUNT) 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

APRIL 4, 2001

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

APRIL 4, 2001

Referral to the Committee on the Judiciary extended for a period ending not later than June 5, 2001

JUNE 5, 2001

Additional sponsors: Mr. HALL of Texas, Mr. SKEEN, Mr. SKELTON, Mr. SWEENEY, Mr. McHUGH, Mr. HONDA, Mr. DAVIS of Florida, Mr. BLUMENAUER, Mr. BENTSEN, Mr. RADANOVICH, Mr. HAYWORTH, Ms. HOOLEY of Oregon, Mr. BALDACCI, Mrs. BIGGERT, Mr. THORNBERRY, Ms. GRANGER, Ms. PRYCE of Ohio, Mr. HUNTER, Mr. CUNNINGHAM, Mr. HAYES, Mr. WATKINS, Mr. EHLERS, Mr. DOOLITTLE, Mr. WHITFIELD, Mr. BRADY of Texas, Mr. LEWIS of Kentucky, Ms. SCHAKOWSKY, Mr. GRAHAM, Mr. CHABOT, Mr. FLAKE, Mr. ISSA, Mr. BERMAN, Mr. CRENSHAW, Mr. LANGEVIN, Mr. RAMSTAD, Mr. GIBBONS, Ms. JACKSON-LEE of Texas, Mr. SOUDER, Mr. GILMAN, Mr. DINGELLI, Mr. DELAY, Mr. BROWN of South Carolina, Mr. RILEY, Mr. GRUCCI, Mr. WALSH, Mr. SHERWOOD, and Mr. SHUSTER

JUNE 5, 2001

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on February 14, 2001]

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 Commercial
5 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 nesses, and institutions can handle without further
2 investment. The sending of such mail is increasingly
3 and negatively affecting the quality of service pro-
4 vided to customers of Internet access service, and
5 shifting costs from the sender of the advertisement to
6 the Internet access service.

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

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

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

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

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

10 (b) **CONGRESSIONAL DETERMINATION OF PUBLIC POL-**
11 **ICY.**—*On the basis of the findings in subsection (a), the*
12 *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 com-*
16 *pelled to bear the costs of unsolicited commercial elec-*
17 *tronic mail without compensation from the sender;*
18 *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:*

(A) controls, is controlled by, or is under common control with such entity; and

5 (B) provides marketing information to, re-
6 ceives marketing information from, or shares
7 marketing information with such entity.

9 (6) *ELECTRONIC MAIL ADDRESS.*—

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

23 (8) *INITIATE*.—The term “initiate”, when used
24 with respect to a commercial electronic mail message,

1 means to originate such message or to procure the
2 origination of such message.

3 (9) *INITIATOR*.—The term “initiator”, when used
4 with respect to a commercial electronic mail message,
5 means the person who initiates such message. Such
6 term does not include a provider of an Internet access
7 service, or any other person, whose role with respect
8 to the message is limited to the transmission, routing,
9 relaying, handling, or storing, through an automatic
10 technical process, of a message originated by others.

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

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

18 (12) *RECIPIENT CONSENT*.—The term “recipient
19 consent”, when used with respect to a commercial
20 electronic mail message, means that—

21 (A) the message falls within the scope of an
22 express and unambiguous invitation or consent
23 granted by the recipient and not subsequently re-
24 voked;

(B) the recipient had clear and conspicuous notice, at the time such invitation or consent was granted, of—

4 (i) the fact that the recipient was
5 granting the invitation or consent;

14 (iii) a reasonable and effective mecha-
15 nism for revoking the invitation or consent;

16

21 (13) *PRE-EXISTING BUSINESS RELATIONSHIP.—*

22 *The term “pre-existing business relationship” means,*
23 *when used with respect to the initiator and recipient*
24 *of a commercial electronic mail message, that—*

9 (ii) the recipient; and

(15) *UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.*—The term “unsolicited commercial electronic mail message” means any commercial electronic mail message that is sent to a recipient—

(A) without prior recipient consent; and

(B)(i) with whom the initiator does not have a pre-existing business relationship;

(ii) by an initiator or any affiliate of the initiator after the recipient requests, pursuant to section 5(a)(1), not to receive further commercial electronic mail messages from that initiator; or

(iii) by a person or any affiliate of the person after the expiration of a reasonable period of time after the recipient requests, pursuant to section 5(a)(2), to be removed from the distribution lists under the control of a person.

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

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

22 (1) in subsection (a)(5)—

23 (A) in subparagraph (B), by striking "or"
24 at the end;

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

13 (2) in subsection (c)(2)(A)—

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

15 *and*

(B) by inserting before “; and” the following: “, or (ii) an offense under subsection (a)(5)(D) of this section”; and

19 (3) in subsection (e)—

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

22 (B) by striking the period at the end of
23 paragraph (9) and inserting “; and”; and

24 (C) by adding at the end the following new
25 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 COMMER-
11 CIAL ELECTRONIC MAIL.*—*It shall be unlawful for any
12 person or affiliate of such person to initiate the trans-
13 mission of a commercial electronic mail message to
14 any person within the United States unless such mes-
15 sage contains a valid electronic mail address, con-
16 spicuously displayed, to which a recipient may send
17 a reply to the initiator to indicate a desire not to re-
18 ceive any further messages from the initiator and any
19 affiliates of the initiator.*

20 (2) *PROHIBITION OF TRANSMISSION OF UNSOLIC-
21 ITED COMMERCIAL ELECTRONIC MAIL AFTER OBJEC-
22 TION.*—*If a recipient makes a request to a person to
23 be removed from all distribution lists under the con-
24 trol of such person, after receipt of such request—*

1 *in a manner that is clear and conspicuous to the*
2 *recipient—*

3 *(A) identification that the message is an*
4 *unsolicited commercial electronic mail message;*

5 *(B) notice of the opportunity under para-*
6 *graph (2) to decline to receive further unsolicited*
7 *commercial electronic mail messages from the*
8 *initiator or any affiliate of the initiator; and*

9 *(C) the physical mailing address of the*
10 *initiator.*

11 *(4) TREATMENT OF INTERNAL OPT-OUT*
12 *LISTS.—If the policy of a provider of Internet access*
13 *service requires compensation specifically for the*
14 *transmission of unsolicited commercial electronic*
15 *mail messages into its system, it shall be unlawful for*
16 *the provider to fail to provide an option to its sub-*
17 *scribers not to receive any unsolicited commercial*
18 *electronic mail messages, except that such option shall*
19 *not be required for any subscriber who has agreed to*
20 *receive unsolicited commercial electronic mail mes-*
21 *sages in exchange for discounted or free Internet ac-*
22 *cess service.*

23 *(5) AFFIRMATIVE DEFENSE.—It shall be an af-*
24 *firmative defense in any action or proceeding brought*

1 *for a violation of any paragraph of this subsection*
2 *that the violation was not intentional.*

3 *(b) CONDITIONS FOR ENFORCEMENT BY PROVIDERS OF*
4 *INTERNET ACCESS SERVICE.—*

5 *(1) AUTHORITY TO OPT OUT.—After the expira-*
6 *tion of a reasonable period of time for taking any ac-*
7 *tion necessary to comply with a request under sub-*
8 *paragraph (B) that begins upon the receipt of such a*
9 *request, it shall be unlawful for a person or any affil-*
10 *iate of such person to initiate the transmission of an*
11 *unsolicited commercial electronic mail message, to*
12 *any recipient within the United States, that uses the*
13 *equipment of a provider of Internet access service to*
14 *recipients of electronic mail messages for such trans-*
15 *mission, if such provider—*

16 *(A)(i) has in effect a policy that meets the*
17 *requirements under paragraph (2); or*

18 *(ii) has received a significant number of*
19 *complaints from its bona fide subscribers that*
20 *they have received unsolicited commercial elec-*
21 *tronic mail messages from such person; and*

22 *(B) makes a request to such person by*
23 *means of an electronic mail message not to use*
24 *the equipment of the provider for the trans-*

1 *mission of any unsolicited commercial electronic*
2 *mail message.*

3 *(2) UCE POLICY.—A policy of a provider of*
4 *Internet access service to recipients meets the require-*
5 *ments under this paragraph only if—*

6 *(A) it is a policy regarding the use of the*
7 *equipment of the provider for the transmission of*
8 *unsolicited commercial electronic mail messages*
9 *that prohibits the transmission, using such*
10 *equipment, of all such messages;*

11 *(B) the provider of Internet access service is*
12 *making a good faith effort to block the trans-*
13 *mission of all unsolicited commercial electronic*
14 *mail messages that use the equipment of provider*
15 *for such transmission;*

16 *(C) the policy is made publicly available by*
17 *clear and conspicuous posting on a World Wide*
18 *Web site of the provider of Internet access serv-*
19 *ice, which has an Internet domain name that is*
20 *identical to the Internet domain name of the*
21 *electronic mail address to which the prohibition*
22 *referred to in subparagraph (A) applies; and*

23 *(D) the provider of Internet access service*
24 *informs each subscriber to such service of the pol-*
25 *icy.*

1 (c) *RULE OF CONSTRUCTION.*—Nothing in this Act
2 shall be construed—

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

12 (2) to render lawful any such policy that is un-
13 lawful under any other provision of law.

14 (d) *PROTECTION OF INTERNET ACCESS SERVICE PRO-
15 VIDERS GOOD FAITH EFFORTS TO BLOCK TRANS-
16 MISSIONS.*—A provider of Internet access service shall not
17 be liable, under any Federal, State, or local civil or crimi-
18 nal law, for any action it takes in good faith to block the
19 transmission or receipt of unsolicited commercial electronic
20 mail messages.

21 **SEC. 6. ENFORCEMENT.**

22 (a) *ENFORCEMENT THROUGH FTC ACT.*—

23 (1) *ENFORCEMENT.*—Except as otherwise pro-
24 vided in this Act, section 5 shall be enforced by the
25 Commission under the FTC Act.

23 (b) PRIVATE RIGHT OF ACTION.—

24 (1) *ACTIONS AUTHORIZED.*—A recipient or a
25 provider of Internet access service may, if otherwise

1 permitted by the laws or rules of court of a State,
2 bring in an appropriate court of that State, or may
3 bring in an appropriate Federal court if such laws or
4 rules do not so permit, either or both of the following
5 actions:

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

8 (B) An action to recover for actual mone-
9 tary loss from such a violation in an amount
10 equal to the greater of—

11 (i) the amount of such actual monetary
12 loss; or

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

15 (2) ADDITIONAL REMEDIES.—If the court finds
16 that the defendant willfully or repeatedly violated sec-
17 tion 5, the court may, in its discretion, increase the
18 amount of the award to an amount equal to not more
19 than three times the amount available under para-
20 graph (1).

21 (3) ATTORNEY FEES.—In any such action, the
22 court may, in its discretion, require an undertaking
23 for the payment of the costs of such action, and assess
24 reasonable costs, including reasonable attorneys' fees,
25 against any party.

18 (c) ENFORCEMENT BY STATES.—

19 (1) *IN GENERAL.*—

1 *State may bring civil action on behalf of the*
2 *residents of the State in an appropriate court of*
3 *that State, or in a district court of the United*
4 *States of appropriate jurisdiction for any or all*
5 *of the following relief:*

6 (i) *INJUNCTION.*—*To enjoin that prac-*
7 *tice.*

8 (ii) *COMPLIANCE ENFORCEMENT.*—*To*
9 *enforce compliance with the provisions of*
10 *section 5.*

11 (iii) *DAMAGES.*—*To recover actual*
12 *monetary loss or receive \$500 in damages*
13 *for each violation, except that if the court*
14 *finds that the defendant willfully or repeat-*
15 *edly violated section 5, the court may, in its*
16 *discretion, increase the amount of the*
17 *award to an amount equal to not more than*
18 *3 times the amount otherwise available*
19 *under this clause.*

20 (B) *LIMITATION ON MONETARY DAMAGES.*—
21 *All monetary amounts recovered or received by*
22 *settlement or judgment in an action under this*
23 *paragraph shall be paid directly to the persons*
24 *who incurred losses or suffered damages as a re-*
25 *sult of the violation under section 5 for which the*

1 *action was brought, and no such amounts may*
2 *be retained by the State or may be used directly*
3 *or indirectly to offset the cost of such litigation.*

4 (C) NOTICE.—

5 (i) *IN GENERAL.*—*Before filing an ac-*
6 *tion under subparagraph (A), the attorney*
7 *general of the State involved shall provide*
8 *to the Commission—*

9 (I) *written notice of that action;*
10 *and*

11 (II) *a copy of the complaint for*
12 *that action.*

13 (ii) *EXEMPTION.*—

14 (I) *IN GENERAL.*—*Clause (i) shall*
15 *not apply with respect to the filing of*
16 *an action by an attorney general of a*
17 *State under this subsection, if the at-*
18 *torney general determines that it is not*
19 *feasible to provide the notice described*
20 *in that subparagraph before the filing*
21 *of the action.*

22 (II) *NOTIFICATION.*—*In an action*
23 *described in subclause (I), the attorney*
24 *general of a State shall provide notice*
25 *and a copy of the complaint to the*

3 (2) *INTERVENTION.—*

(B) *EFFECT OF INTERVENTION.—If the Commission intervenes in an action under paragraph (1), it shall have the right—*

11 (i) to be heard with respect to any
12 matter that arises in that action; and
13 (ii) to file a petition for appeal.

19 (A) conduct investigations;

20 (B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

24 (4) VENUE; SERVICE OF PROCESS.—

(B) *SERVICE OF PROCESS.*—In an action brought under paragraph (1), process may be served in any district in which the defendant—
(i) is an inhabitant; or
(ii) may be found.

11 SEC. 7. EFFECT ON OTHER LAWS.

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

19 (b) *STATE LAW.*—No State or local government may
20 impose any civil liability for commercial activities or ac-
21 tions in interstate or foreign commerce in connection with
22 an activity or action described in section 5 of this Act that
23 is inconsistent with the treatment of such activities or ac-
24 tions under this Act, except that this Act shall not preempt
25 any civil action under—

1 (1) *State trespass or contract law; or*
2 (2) *any provision of Federal, State, or local*
3 *criminal law or any civil remedy available under*
4 *such law that relates to acts of computer fraud or*
5 *abuse arising from the unauthorized transmission of*
6 *unsolicited commercial electronic mail messages.*

7 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
8 **ELECTRONIC MAIL.**

9 *Not later than 18 months after the date of the enact-*
10 *ment of this Act, the Federal Trade Commission shall sub-*
11 *mit a report to the Congress that provides a detailed anal-*
12 *ysis of the effectiveness and enforcement of the provisions*
13 *of this Act and the need (if any) for the Congress to modify*
14 *such provisions.*

15 **SEC. 9. SEVERABILITY.**

16 *If any provision of this Act or the application thereof*
17 *to any person or circumstance is held invalid, the remain-*
18 *der of this Act and the application of such provision to*
19 *other persons or circumstances shall not be affected.*

20 **SEC. 10. EFFECTIVE DATE.**

21 *The provisions of this Act shall take effect 60 days after*
22 *the date of the enactment of this Act.*

23 **SECTION 1. SHORT TITLE.**

24 **This Act may be cited as the “Anti-**
25 **Spamming Act of 2001”.**

1 SEC. 2. SPAMMING PROHIBITIONS.

2 (a) IN GENERAL.—Part I of title 18, United
3 States Code, is amended by inserting after
4 chapter 29 the following:

5 “CHAPTER 30—ELECTRONIC MAIL

“Sec.

“621. Unsolicited commercial electronic mail containing fraudulent transmission information.

“622. Warning labels for electronic mail containing advertisements harmful to minors.

6 “§ 621. Unsolicited commercial electronic mail containing fraudulent transmission information

7 “(a) Whoever intentionally initiates in one
8 or more transactions the transmission of 10 or
9 more unsolicited commercial electronic mail
10 messages to one or more protected computers
11 in the United States, knowing that each such
12 message contains or is accompanied by head-
13 er information that is materially false or mis-
14 leading as to the identity of the person initi-
15 ating the transmission shall be fined under
16 this title, and in the case of an offense under
17 this section which occurs after conviction for
18 a prior offense under this section, shall be so
19 fined or imprisoned not more than one year,
20 or both.

21 “(b) As used in this section—

1 **“(1) the term ‘commercial electronic**
2 **mail message’ means an electronic mail**
3 **message the primary purpose of which is**
4 **to advertise or promote, for a commercial**
5 **purpose, a product or service (including**
6 **content on an Internet website);**

7 **“(2) the term ‘header information’**
8 **means the source, destination, and rout-**
9 **ing information, including the origi-**
10 **nating domain name and originating elec-**
11 **tronic mail address; and**

12 **“(3) the term ‘protected computer’ has**
13 **the meaning given that term in section**
14 **1030(e)(2) of this title.**

15 **“(c)(1) A provider of Internet access serv-**
16 **ice, if otherwise permitted by the laws or**
17 **rules of a court of a State, may bring in an ap-**
18 **propriate court of that State, or, if such laws**
19 **or rules do not so permit, may bring in an ap-**
20 **propriate Federal court, an action to recover**
21 **for actual or statutory damages, as provided**
22 **in paragraph (2), and for costs, as provided in**
23 **paragraph (4).**

1 **“(2) A person committing a violation of**
2 **subsection (a) is liable to a provider of Inter-**
3 **net access service for either—**

4 **“(A) the actual damages suffered by**
5 **the provider of Internet access service; or**
6 **“(B) statutory damages, as provided**
7 **in paragraph (3).**

8 **“(3) At any time before final judgment in**
9 **an action, a provider of Internet access serv-**
10 **ice may elect to recover an award of statutory**
11 **damages for each violation of subsection (a)**
12 **in the sum of \$5 per violation, not to exceed**
13 **a total of \$1,000,000, except that, during any**
14 **one-year period for which the defendant has**
15 **transmitted in excess of 20,000,000 unsolicited**
16 **commercial electronic mail messages, no such**
17 **limit on liability shall exist.**

18 **“(4) In any action brought under para-**
19 **graph (1), the court may award to a prevailing**
20 **party reasonable litigation expenses incurred**
21 **by that party, including reasonable attorney’s**
22 **fees, as a part of the costs awarded under sec-**
23 **tion 1920 of title 28 against any party found**
24 **in that action to have committed a violation**
25 **of subsection (a).**

3 “(a)(1) The Attorney General shall pre-
4 scribe marks or notices to be included in elec-
5 tronic mail that contains a sexually oriented
6 advertisement in order to inform the recipi-
7 ent of that fact.

8 **“(2) Whoever, in any electronic mail that**
9 **is carried on an instrumentality in or affect-**
10 **ing interstate or foreign commerce, know-**
11 **ingly includes a sexually oriented advertise-**
12 **ment but does not include in such electronic**
13 **mail the marks or notices prescribed by the**
14 **Attorney General under this section shall be**
15 **fined under this title or imprisoned not more**
16 **than one year, or both.**

17 **“(b) As used in this section, the term ‘sexu-**
18 **ally oriented advertisement’ means any ad-**
19 **vertisement that depicts, in actual or simu-**
20 **lated form, or explicitly describes, in a pre-**
21 **dominantly sexual context, human genitalia,**
22 **any act of natural or unnatural sexual inter-**
23 **course, any act of sadism or masochism, or**
24 **any other erotic subject directly related to the**
25 **foregoing, but material otherwise within the**
26 **definition of this subsection shall be deemed**

1 **not to constitute a sexually oriented adver-**
2 **tisement if it constitutes only a small and in-**
3 **significant part of the whole, the remainder**
4 **of which is not primarily devoted to sexual**
5 **matters.”.**

6 **(b) CLERICAL AMENDMENT.—The table of**
7 **chapters at the beginning of part I of title 18,**
8 **United States Code, is amended by inserting**
9 **after the item relating to chapter 29 the fol-**
10 **lowing new item:**

“30. Electronic mail 621”.

11 **SEC. 3. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
12 **ELECTRONIC MAIL.**

13 **Not later than 18 months after the date of**
14 **the enactment of this Act, the Attorney Gen-**
15 **eral shall submit a report to the Congress that**
16 **provides a detailed analysis of the effective-**
17 **ness and enforcement of the provisions of this**
18 **Act and the need (if any) for the Congress to**
19 **modify such provisions.**

Union Calendar No. 43

107TH CONGRESS
1ST SESSION

H. R. 718

[Report No. 107-41, Parts I and II]

A BILL

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

JUNE 5, 2001

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed