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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. DINGELL, 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 (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 businesses*
14 *advertise and attract customers in the online environ-*
15 *ment.*

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

21 (5) *Unsolicited commercial electronic mail may*
22 *impose significant monetary costs on Internet access*
23 *services, businesses, and educational and nonprofit*
24 *institutions that carry and receive such mail, as there*
25 *is a finite volume of mail that such providers, busi-*

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:*

1 (1) *AFFILIATE.*—The term “affiliate” means,
2 with respect to an entity, any other entity that—

3 (A) controls, is controlled by, or is under
4 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.

8 (2) *CHILDREN.*—The term “children” includes
9 natural children, stepchildren, adopted children, and
10 children who are wards of or in custody of the parent,
11 who have not attained the age of 18 and who reside
12 with the parent or are under his or her care, custody,
13 or supervision.

14 (3) *COMMERCIAL ELECTRONIC MAIL MESSAGE.*—
15 The term “commercial electronic mail message”
16 means any electronic mail message that primarily
17 advertises or promotes the commercial availability of
18 a product or service for profit or invites the recipient
19 to view content on an Internet web site that is oper-
20 ated for a commercial purpose. An electronic mail
21 message shall not be considered to be a commercial
22 electronic mail message solely because such message
23 includes a reference to a commercial entity that serves
24 to identify the initiator.

1 (4) *COMMISSION.*—*The term “Commission”*
2 *means the Federal Trade Commission.*

3 (5) *DOMAIN NAME.*—*The term “domain name”*
4 *means any alphanumeric designation which is reg-*
5 *istered with or assigned by any domain name reg-*
6 *istrar, domain name registry, or other domain name*
7 *registration authority as part of an electronic address*
8 *on the Internet.*

9 (6) *ELECTRONIC MAIL ADDRESS.*—

10 (A) *IN GENERAL.*—*The term “electronic*
11 *mail address” means a destination (commonly*
12 *expressed as a string of characters) to which elec-*
13 *tronic mail can be sent or delivered.*

14 (B) *INCLUSION.*—*In the case of the Internet,*
15 *the term “electronic mail address” may include*
16 *an electronic mail address consisting of a user*
17 *name or mailbox (commonly referred to as the*
18 *“local part”) and a reference to an Internet do-*
19 *main (commonly referred to as the “domain*
20 *part”).*

21 (7) *FTC ACT.*—*The term “FTC Act” means the*
22 *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;*

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

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

6 (ii) the scope of the invitation or con-
7 sent, including what types of commercial
8 electronic mail messages would be covered
9 by the invitation or consent and what send-
10 ers or types of senders, if any, other than
11 the party to whom the invitation or consent
12 was communicated would be covered by the
13 invitation or consent; and

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

17 (C) the recipient has not, after granting the
18 invitation or consent, submitted a request under
19 section 5(a)(1) not to receive unsolicited commer-
20 cial electronic mail messages from the initiator.

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—

1 (A) *within the 5-year period ending upon*
2 *receipt of such message, there has been a business*
3 *transaction (including a transaction involving*
4 *the provision, free of charge, of information,*
5 *goods, or services, that were requested by the re-*
6 *ipient) between—*

7 *(i) the initiator or any affiliate of the*
8 *initiator; and*

9 *(ii) the recipient; and*

10 (B) *the recipient was, at the time of such*
11 *transaction or thereafter or in the transmission*
12 *of the commercial electronic mail message, pro-*
13 *vided a clear and conspicuous notice of an op-*
14 *portunity not to receive further messages from*
15 *the initiator and any affiliates of the initiator*
16 *and has not exercised such opportunity.*

17 (14) *RECIPIENT.—The term “recipient”, when*
18 *used with respect to a commercial electronic mail*
19 *message, means the addressee of such message. If an*
20 *addressee of a commercial electronic mail message has*
21 *one or more electronic mail addresses in addition to*
22 *the address to which the message was addressed, the*
23 *addressee shall be treated as a separate recipient with*
24 *respect to each such address.*

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

5 *(A) without prior recipient consent; and*

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

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

12 *(iii) by a person or any affiliate of the per-*
 13 *son after the expiration of a reasonable period of*
 14 *time after the recipient requests, pursuant to sec-*
 15 *tion 5(a)(2), to be removed from the distribution*
 16 *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;*

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

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

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

16 (B) by inserting before “; and” the fol-
17 lowing: “, or (ii) an offense under subsection
18 (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 (A) it shall be unlawful for such person or
2 any affiliate of such person to initiate the trans-
3 mission of an unsolicited commercial electronic
4 mail message to such a recipient within the
5 United States after the expiration of a reason-
6 able period of time for removal from such lists;

7 (B) such person and affiliates (and the
8 agents or assigns of the person or affiliate) shall
9 delete or suppress the electronic mail addresses of
10 the recipient from all mailing lists owned or con-
11 trolled by such person or affiliate (or such agents
12 or assigns) within a reasonable period of time
13 for such deletion or suppression; and

14 (C) it shall be unlawful for such person or
15 affiliate (or such agents or assigns) to sell, lease,
16 exchange, license, or engage in any other trans-
17 action involving mailing lists bearing the elec-
18 tronic mail addresses of the recipient.

19 (3) *INCLUSION OF IDENTIFIER, OPT-OUT, AND*
20 *PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL*
21 *ELECTRONIC MAIL.*—It shall be unlawful for any per-
22 son to initiate the transmission of any unsolicited
23 commercial electronic mail message to any person
24 within the United States unless the message provides,

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.*

1 (2) *UNFAIR OR DECEPTIVE PRACTICE.*—Any vio-
2 lation of section 5 shall be treated as a violation of
3 a rule under section 18 of the FTC Act (15 U.S.C.
4 57a) regarding unfair or deceptive acts or practices.

5 (3) *SCOPE OF COMMISSION ENFORCEMENT.*—The
6 Commission shall prevent any person from violating
7 section 5 of this Act in the same manner, by the same
8 means, and with the same jurisdiction, powers, and
9 duties as though all applicable terms and provisions
10 of the FTC Act were incorporated into and made a
11 part of this section. Any person who violates section
12 5 of this Act shall be subject to the penalties and enti-
13 tled to the privileges and immunities provided in the
14 FTC Act in the same manner, by the same means,
15 and with the same jurisdiction, powers, and duties as
16 though all applicable terms and provisions of the FTC
17 Act were incorporated into and made a part of this
18 section.

19 (4) *PROHIBITION OF REGULATIONS.*—Neither the
20 Commission nor any other Federal department or
21 agency shall have any authority to issue any regula-
22 tions to implement the provisions of this 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.*

1 (4) *PROHIBITION OF CLASS ACTIONS.*—A private
2 action arising under this subsection may not be
3 brought as a plaintiff class action pursuant to the
4 Federal Rules of Civil Procedure nor as a plaintiff
5 class action pursuant to the law or rules of procedure
6 of any State.

7 (5) *PROTECTION OF TRADE SECRETS.*—At the re-
8 quest of any party to an action brought pursuant to
9 this subsection or any other participant in such an
10 action, the court may, in its discretion, issue protec-
11 tive orders and conduct legal proceedings in such a
12 way as to protect the secrecy and security of the com-
13 puter, computer network, computer data, computer
14 program, and computer software involved in order to
15 prevent possible recurrence of the same or a similar
16 act by another person and to protect any trade secrets
17 of any such party or participant.

18 (c) *ENFORCEMENT BY STATES.*—

19 (1) *IN GENERAL.*—

20 (A) *CIVIL ACTIONS.*—In any case in which
21 the attorney general of a State has reason to be-
22 lieve that an interest of the residents of that
23 State has been or is threatened or adversely af-
24 fected by the engagement of any person in a
25 practice that violates section 5 of this Act, the

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*

1 *Commission at the same time as the*
2 *attorney general files the action.*

3 (2) *INTERVENTION.*—

4 (A) *IN GENERAL.*—*On receiving notice*
5 *under paragraph (1)(B), the Commission shall*
6 *have the right to intervene in the action that is*
7 *the subject of the notice.*

8 (B) *EFFECT OF INTERVENTION.*—*If the*
9 *Commission intervenes in an action under para-*
10 *graph (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.*

14 (3) *CONSTRUCTION.*—*For purposes of bringing*
15 *any civil action under paragraph (1), nothing in this*
16 *Act shall be construed to prevent an attorney general*
17 *of a State from exercising the powers conferred on the*
18 *attorney general by the laws of that State to—*

19 (A) *conduct investigations;*

20 (B) *administer oaths or affirmations; or*

21 (C) *compel the attendance of witnesses or*
22 *the production of documentary and other evi-*
23 *dence.*

24 (4) *VENUE; SERVICE OF PROCESS.*—

1 (A) *VENUE*.—Any action brought under
2 paragraph (1) may be brought in the district
3 court of the United States that meets applicable
4 requirements relating to venue under section
5 1391 of title 28, United States Code.

6 (B) *SERVICE OF PROCESS*.—In an action
7 brought under paragraph (1), process may be
8 served in any district in which the defendant—
9 (i) is an inhabitant; or
10 (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 fraudu-
lent transmission information.

“622. Warning labels for electronic mail containing advertise-
ments harmful to minors.

6 “§ 621. Unsolicited commercial electronic mail con-
7 taining fraudulent transmission informa-
8 tion

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

23 “(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).**

1 **“§ 622. Warning labels for electronic mail containing**
2 **advertisements harmful to minors**

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