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[Report No. 107-318]

To prohibit senders of unsolicited commercial electronic mail from disguising the source of their messages, to give consumers the choice to cease receiving a sender's unsolicited commercial electronic mail messages, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2001

Mr. BURNS (for himself, Mr. WYDEN, Mr. LIEBERMAN, Ms. LANDRIEU, Mr. TORRICELLI, Mr. BREAUX, Mr. MURKOWSKI, Mr. ALLEN, Ms. SNOWE, Mr. THOMAS, Mr. HUTCHINSON, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

OCTOBER 16, 2002

Reported by Mr. HOLLINGS, with an amendment

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

A BILL

To prohibit senders of unsolicited commercial electronic mail from disguising the source of their messages, to give consumers the choice to cease receiving a sender's unsolicited commercial electronic mail messages, 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 “Controlling the Assault
5 of Non-Solicited Pornography and Marketing Act of
6 2001”, or the “CAN-SPAM Act of 2001”.

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

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

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

11 (2) The Internet has increasingly become a critical
12 mode of global communication and now presents
13 unprecedented opportunities for the development and
14 growth of global commerce and an integrated world-
15 wide economy. In order for global commerce on the
16 Internet to reach its full potential, individuals and
17 entities using the Internet and other online services
18 should be prevented from engaging in activities that
19 prevent other users and Internet service providers
20 from having a reasonably predictable, efficient, and
21 economical online experience.

22 (3) Unsolicited commercial electronic mail can
23 be a mechanism through which businesses advertise
24 and attract customers in the online environment.

1 honor the requests of recipients not to receive ele-
2 tronic mail from such senders in the future, or both.

3 (7) An increasing number of senders of unsolic-
4 ited commercial electronic mail purposefully disguise
5 the source of such mail so as to prevent recipients
6 from responding to such mail quickly and easily.

7 (8) An increasing number of senders of unsolic-
8 ited commercial electronic mail purposefully include
9 misleading information in the message's subject lines
10 in order to induce the recipients to view the mes-
11 sages.

12 (9) Because recipients of unsolicited commercial
13 electronic mail are unable to avoid the receipt of
14 such mail through reasonable means, such mail may
15 invade the privacy of recipients.

16 (10) The practice of sending unsolicited com-
17 mercial electronic mail is sufficiently profitable that
18 senders of such mail will not be unduly burdened by
19 the costs associated with providing an "opt-out"
20 mechanism to recipients and ensuring that recipients
21 who exercise such opt-out do not receive further
22 messages from that sender.

23 (11) In legislating against certain abuses on the
24 Internet, Congress should be very careful to avoid
25 infringing in any way upon constitutionally protected

1 rights, including the rights of assemble, free speech,
2 and privacy.

3 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
4 POLICY.—On the basis of the findings in subsection (a),
5 the Congress determines that—

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

8 (2) senders of unsolicited commercial electronic
9 mail should not mislead recipients as to the source
10 or content of such mail; and

11 (3) recipients of unsolicited commercial elec-
12 tronic mail have a right to decline to receive addi-
13 tional unsolicited commercial electronic mail from
14 the same source.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) AFFIRMATIVE CONSENT.—The term “af-
18 firmative consent”, when used with respect to a
19 commercial electronic mail message, means—

20 (A) the message falls within the scope of
21 an express and unambiguous invitation or per-
22 mission granted by the recipient and not subse-
23 quently revoked;

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

(i) the fact that the recipient was granting the invitation or permission;

(ii) the scope of the invitation or permission, including what types of commercial electronic mail messages would be covered by the invitation or permission and what senders or types of senders, if any, other than the party to whom the invitation or permission was communicated would be covered by the invitation or permission; and

(iii) a reasonable and effective mechanism for revoking the invitation or permission; and

(C) the recipient has not, after granting the invitation or permission, submitted a request under section 5(a)(3) not to receive unsolicited commercial electronic mail messages from the sender of the message.

(2) COMMERCIAL ELECTRONIC MAIL MES-
E.—The term "commercial electronic mail mes-
sage" means any electronic mail message the pri-

1 mary purpose of which is to advertise or promote,
2 for a commercial purpose, a commercial product or
3 service (including content on an Internet website).
4 An electronic mail message shall not be considered
5 to be a commercial electronic mail message solely be-
6 cause such message includes a reference to a com-
7 mercial entity that serves to identify the sender or
8 a reference or link to an Internet website operated
9 for a commercial purpose.

10 (3) COMMISSION.—The term “Commission”
11 means the Federal Trade Commission.

18 (5) ELECTRONIC MAIL ADDRESS.—

1 user name or mailbox (commonly referred to as
2 the “local part”) and a reference to an Internet
3 domain (commonly referred to as the “domain
4 part”).

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

8 (7) ~~FUNCTIONING RETURN ELECTRONIC MAIL~~
9 ~~ADDRESS~~.—

10 (A) The term “functioning return elec-
11 tronic mail address” means a legitimately ob-
12 tained electronic mail address, clearly and con-
13 spicuously displayed in a commercial electronic
14 mail message, that—

15 (i) remains capable of receiving mes-
16 sages for no less than 30 days after the
17 transmission of such commercial electronic
18 mail message; and

19 (ii) that has capacity reasonably eval-
20 uated, in light of the number of recipi-
21 ents of the commercial electronic mail mes-
22 sage, to enable it to receive the full ex-
23 pected quantity of reply messages from
24 such recipients.

23 (B) the recipient was, at the time of such
24 transaction or thereafter, provided a clear and
25 conspicuous notice of an opportunity not to re-

1 ceive unsolicited commercial electronic mail
2 messages from the sender and has not exercised
3 such opportunity.

4 (10) **INITIATE.**—The term “initiate”, when
5 used with respect to a commercial electronic mail
6 message, means to originate such message, to pro-
7 cure the origination of such message, or to assist in
8 the origination of such message through the provi-
9 sion or selection of addresses to which such message
10 will be sent, but shall not include actions that con-
11 stitute routine conveyance of such message. For pur-
12 poses of this Act, more than 1 person may be con-
13 sidered to have initiated the same message.

14 (11) **INTERNET.**—The term “Internet” has the
15 meaning given that term in the Internet Tax Free-
16 dom Act (Pub. L. 105-277, Div. C, Title XI, §
17 1101(e)(3)(e)).

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

22 (13) **PROTECTED COMPUTER.**—The term “pro-
23 tected computer” has the meaning given that term
24 in section 1030(e)(2) of title 18, United States
25 Code.

23 (17) UNSOLICITED COMMERCIAL ELECTRONIC
24 MAIL MESSAGE.—

(A) IN GENERAL.—The term “unsolicited commercial electronic mail message” means any commercial electronic mail message that is sent to a recipient—

(i) without prior affirmative consent or implied consent from the recipient; or

(ii) to a recipient who, subsequent to the establishment of affirmative or implied consent under subparagraph (i), has expressed, in a reply submitted pursuant to section 5(a)(3), or in response to any other opportunity the sender may have provided to the recipient, a desire not to receive commercial electronic mail messages from the sender.

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term “unsolicited commercial electronic mail message” does not include an electronic mail message sent by or on behalf of one or more lawful owners of copyright, patent, publicity, or trademark rights to an unauthorized user of protected material notifying such user that the use is unauthorized and requesting that the use be terminated or that per-

1 mission for such use be obtained from the
2 rights holder or holders.

3 SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-
4 CIAL ELECTRONIC MAIL CONTAINING FRAUD-
5 ULENT ROUTING INFORMATION.

6 (a) IN GENERAL.—Chapter 63 of title 48, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 1348. Unsolicited commercial electronic mail con-**
10 **taining fraudulent transmission informa-**
11 **tion**

12 (a) IN GENERAL.—Any person who intentionally
13 initiates the transmission of any unsolicited commercial
14 electronic mail message to a protected computer in the
15 United States with knowledge that such message contains
16 or is accompanied by header information that is materially
17 or intentionally false or misleading shall be fined or im-
18 prisoned for not more than 1 year, or both, under this
19 title.

20 “(b) DEFINITIONS.—Any term used in subsection (a)
21 that is defined in section 3 of the Unsolicited Commercial
22 Electronic Mail Act of 2001 has the meaning giving it in
23 that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
2 ysis for chapter 63 of title 18, United States Code, is
3 amended by adding at the end the following:

“1348. Unsolicited commercial electronic mail containing fraudulent routing in-
formation”.

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

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
7 SAGES.—

8 (1) PROHIBITION OF FALSE OR MISLEADING
9 TRANSMISSION INFORMATION.—It shall be unlawful
10 for any person to initiate the transmission, to a pro-
11 tected computer, of a commercial electronic mail
12 message that contains, or is accompanied by, header
13 information that is materially or intentionally false
14 or misleading, or not legitimately obtained.

15 (2) PROHIBITION OF DECEPTIVE SUBJECT
16 HEADINGS.—It shall be unlawful for any person to
17 initiate the transmission, to a protected computer, of
18 a commercial electronic mail message with a subject
19 heading that such person knows is likely to mislead
20 the recipient about a material fact regarding the
21 contents or subject matter of the message.

22 (3) INCLUSION OF RETURN ADDRESS IN COM-
23 MERCIAL ELECTRONIC MAIL.—It shall be unlawful
24 for any person to initiate the transmission of a com-

1 mercial electronic mail message to a protected com-
2 puter unless such message contains a functioning re-
3 turn electronic mail address to which a recipient
4 may send a reply to the sender to indicate a desire
5 not to receive further messages from that sender at
6 the electronic mail address at which the message
7 was received.

20 (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND
21 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL
22 ELECTRONIC MAIL.—It shall be unlawful for any
23 person to initiate the transmission of any unsolicited
24 commercial electronic mail message to a protected

1 computer unless the message provides, in a manner
2 that is clear and conspicuous to the recipient—

3 (A) identification that the message is an
4 advertisement or solicitation;

5 (B) notice of the opportunity under para-
6 graph (3) to decline to receive further unsolici-
7 ited commercial electronic mail messages from
8 the sender; and

9 (C) a valid physical postal address of the
10 sender.

11 (b) NO EFFECT ON POLICIES OF PROVIDERS OF
12 INTERNET ACCESS SERVICE.—Nothing in this Act shall
13 be construed to have any effect on the lawfulness or un-
14 lawfulness, under any other provision of law, of the adop-
15 tion, implementation, or enforcement by a provider of
16 Internet access service of a policy of declining to transmit,
17 route, relay, handle, or store certain types of electronic
18 mail messages.

19 **SEC. 6. ENFORCEMENT.**

20 (a) ENFORCEMENT BY COMMISSION.—

21 (1) IN GENERAL.—Section 5 of this Act shall
22 be enforced by the Commission under the FTC Act.
23 For purposes of such Commission enforcement, a
24 violation of section 5 of this Act shall be treated as
25 a violation of a rule under section 18 (15 U.S.C.

1 57a) of the FTC Act regarding unfair or deceptive
2 acts or practices.

3 (2) SCOPE OF COMMISSION ENFORCEMENT AU-
4 THORITY.—

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

19 (B) Nothing in this Act shall be construed
20 to give the Commission authority over activities
21 that are otherwise outside the jurisdiction of
22 the FTC Act.

23 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
24 CIES.—

1 (1) IN GENERAL.—Compliance with section 5 of
2 this Act shall be enforced under—

3 (A) section 8 of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1818), in the case of—

5 (i) national banks, and Federal
6 branches and Federal agencies of foreign
7 banks, by the Office of the Comptroller of
8 the Currency;

9 (ii) member banks of the Federal Re-
10 serve System (other than national banks),
11 branches and agencies of foreign banks
12 (other than Federal branches, Federal
13 agencies, and insured State branches of
14 foreign banks), commercial lending compa-
15 nies owned or controlled by foreign banks,
16 and organizations operating under section
17 25 or 25A of the Federal Reserve Act (12
18 U.S.C. 601 et seq. and 611 et seq.), by the
19 Federal Reserve Board; and

20 (iii) banks insured by the Federal De-
21 posit Insurance Corporation (other than
22 members of the Federal Reserve System)
23 and insured State branches of foreign
24 banks, by the Board of Directors of the
25 Federal Deposit Insurance Corporation;

1 (G) the Communications Act of 1934 (47
2 U.S.C. 151 et seq.) by the Federal Communica-
3 tions Commission with respect to any person
4 subject to the provisions of that Act.

(2) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of section 5 of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any requirement imposed under section 5 of this Act, any other authority conferred on it by law.

17 (e) ~~ENFORCEMENT BY STATES.~~

1 priate jurisdiction or in any other court of com-
2 petent jurisdiction—

3 (A) to enjoin that practice; or

4 (B) to obtain damages on behalf of resi-
5 dents of the State, in an amount equal to the
6 greater of—

7 (i) the actual monetary loss suffered
8 by such residents; or

9 (ii) the amount determined under
10 paragraph (2).

11 (2) STATUTORY DAMAGES.—For purposes of
12 paragraph (1)(B)(ii), the amount determined under
13 this paragraph is the smaller of—

14 (A) the amount determined by multiplying
15 the number of willful, knowing, or negligent vi-
16 lations by an amount, in the discretion of the
17 court, of up to \$10 (with each separately ad-
18 dressed unlawful message received by such resi-
19 dents treated as a separate violation); or

20 (B) \$500,000.

21 In determining the per-violation penalty under this
22 paragraph, the court shall take into account the de-
23 gree of culpability, any history of prior such conduct,
24 ability to pay, effect on ability to continue to do

1 business, and such other matters as justice may re-
2 quire.

3 (3) TREBLE DAMAGES.—If the court finds that
4 the defendant committed the violation willfully and
5 knowingly, the court may increase the amount recover-
6 erable under paragraph (2) up to threefold.

7 (4) ATTORNEY FEES.—In the case of any suc-
8 cessful action under subparagraph (1), the State
9 shall be awarded the costs of the action and reason-
10 able attorney fees as determined by the court.

11 (5) NOTICE.—

12 (A) PRE-FILING.—Before filing an action
13 under paragraph (1), an attorney general shall
14 provide to the Commission—

15 (i) written notice of that action; and
16 (ii) a copy of the complaint for that
17 action.

18 (B) CONTEMPORANEOUS.—If an attorney
19 general determines that it is not feasible to pro-
20 vide the notice required by subparagraph (A)
21 before filing the action, the notice and a copy
22 of the complaint shall be provided to the Com-
23 mission when the action is filed.

24 (6) INTERVENTION.—If the Commission re-
25 ceives notice under paragraph (4), it—

(A) may intervene in the action that is the subject of the notice; and

(B) shall have the right—

(i) to be heard with respect to any matter that arises in that action; and

(ii) to file a petition for appeal.

(7) CONSTRUCTION.—For purposes of bringing civil action under paragraph (1), nothing in this shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

(A) conduct investigations;

(B) administer oaths or affirmations; or

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

(8) ~~VENUE; SERVICE OF PROCESS.~~—

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

(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) maintains a physical place of business.

17 (d) ACTION BY PROVIDER OF INTERNET ACCESS
18 SERVICE.—

1 (A) enjoin further violation by the defendant;
2 and, or

5 (i) actual monetary loss incurred by
6 the provider of Internet access service as a
7 result of such violation; or

10 (2) STATUTORY DAMAGES.—For purposes of
11 paragraph (1)(B)(ii), the amount determined under
12 this paragraph is the smaller of—

20 (B) \$500,000.

21 In determining the per-violation penalty under this
22 paragraph, the court shall take into account the de-
23 gree of culpability, any history of prior such conduct,
24 ability to pay, effect on ability to continue to do

1 business, and such other matters as justice may re-
2 quire.

3 (3) TREBLE DAMAGES.—If the court finds that
4 the defendant committed the violation willfully and
5 knowingly, the court may increase the amount recover-
6 erable under paragraph (2) up to threefold.

7 (4) ATTORNEY FEES.—In any action brought
8 pursuant to paragraph (1), the court may, in its dis-
9 cretion, require an undertaking for the payment of
10 the costs of such action, and assess reasonable costs,
11 including reasonable attorneys' fees, against any
12 party.

13 (5) EVIDENTIARY PRESUMPTION.—For pur-
14 poses of an action alleging a violation of section
15 5(a)(4) or 5(a)(5), a showing that a recipient has
16 submitted a complaint about a commercial electronic
17 mail message to an electronic mail address main-
18 tained and publicized by the provider of Internet ac-
19 cess service for the purpose of receiving complaints
20 about unsolicited commercial electronic mail mes-
21 sages shall create a rebuttable presumption that the
22 message in question was unsolicited within the
23 meaning of this Act.

24 (e) AFFIRMATIVE DEFENSE.—A person shall not be
25 liable for damages under subsection (e)(2) or (d)(2) if—

1 (1) such person has established and imple-
2 mented, with due care, reasonable practices and pro-
3 cedures to effectively prevent violations of section 5;
4 and

5 (2) any violation occurred despite good faith ef-
6 forts to maintain compliance with such practices and
7 procedures.

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

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

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

22 (1) State trespass, contract, or tort law; or
23 (2) any provision of Federal, State, or local
24 criminal law or any civil remedy available under
25 such law that relates to acts of computer fraud per-

1 petracted by means of the unauthorized transmission
2 of unsolicited commercial electronic mail messages,
3 provided that the mere sending of unsolicited com-
4 mercial electronic mail in a manner that complies
5 with this Act shall not constitute an act of computer
6 fraud for purposes of this subparagraph.

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 Commission, in consultation with the
11 Department of Justice and other appropriate agencies,
12 shall submit a report to the Congress that provides a de-
13 tailed analysis of the effectiveness and enforcement of the
14 provisions of this Act and the need (if any) for the Con-
15 gress to modify such provisions.

16 SEC. 9 SEPARABILITY.

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

21 SEC. 10. EFFECTIVE DATE.

22 The provisions of this Act shall take effect 120 days
23 after the date of the enactment of this Act.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Controlling the Assault
3 of Non-Solicited Pornography and Marketing Act of 2002”,
4 or the “CANSPAM Act of 2002”.*

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

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

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

9 *(2) The Internet has increasingly become a crit-
10 ical mode of global communication and now presents
11 unprecedented opportunities for the development and
12 growth of global commerce and an integrated world-
13 wide economy.*

14 *(3) In order for global commerce on the Internet
15 to reach its full potential, individuals and entities
16 using the Internet and other online services should be
17 prevented from engaging in activities that prevent
18 other users and Internet service providers from having
19 a reasonably predictable, efficient, and economical on-
20 line experience.*

21 *(4) Unsolicited commercial electronic mail can
22 be a mechanism through which businesses advertise
23 and attract customers in the online environment.*

24 *(5) The receipt of unsolicited commercial elec-
25 tronic mail may result in costs to recipients who can-
26 not refuse to accept such mail and who incur costs for*

1 *the storage of such mail, or for the time spent access-*
2 *ing, reviewing, and discarding such mail, or for both.*

3 *(6) Unsolicited commercial electronic mail may*
4 *impose significant monetary costs on providers of*
5 *Internet access services, businesses, and educational*
6 *and nonprofit institutions that carry and receive such*
7 *mail, as there is a finite volume of mail that such*
8 *providers, businesses, and institutions can handle*
9 *without further investment in infrastructure.*

10 *(7) Some unsolicited commercial electronic mail*
11 *contains material that many recipients may consider*
12 *vulgar or pornographic in nature.*

13 *(8) While some senders of unsolicited commercial*
14 *electronic mail messages provide simple and reliable*
15 *ways for recipients to reject (or “opt-out” of) receipt*
16 *of unsolicited commercial electronic mail from such*
17 *senders in the future, other senders provide no such*
18 *“opt-out” mechanism, or refuse to honor the requests*
19 *of recipients not to receive electronic mail from such*
20 *senders in the future, or both.*

21 *(9) An increasing number of senders of unsolic-*
22 *ited commercial electronic mail purposefully disguise*
23 *the source of such mail so as to prevent recipients*
24 *from responding to such mail quickly and easily.*

1 (10) *An increasing number of senders of unsolicited*
2 *commercial electronic mail purposefully include*
3 *misleading information in the message's subject lines*
4 *in order to induce the recipients to view the messages.*

5 (11) *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 a substantial government interest in*
14 *regulation of unsolicited commercial electronic mail;*

15 (2) *senders of unsolicited commercial electronic*
16 *mail should not mislead recipients as to the source or*
17 *content of such mail; and*

18 (3) *recipients of unsolicited commercial elec-*
19 *tronic mail have a right to decline to receive addi-*
20 *tional unsolicited commercial electronic mail from the*
21 *same source.*

22 **SEC. 3. DEFINITIONS.**

23 *In this Act:*

24 (1) **AFFIRMATIVE CONSENT.**—*The term “affirma-*
25 *tive consent”, when used with respect to a commercial*

1 *electronic mail message, means that the message is*
2 *being sent with the express consent, or at the express*
3 *direction of, the recipient.*

4 (2) *COMMERCIAL ELECTRONIC MAIL MESSAGE.—*

5 (A) *IN GENERAL.—The term “commercial*
6 *electronic mail message” means any electronic*
7 *mail message the primary purpose of which is*
8 *the commercial advertisement or promotion of a*
9 *commercial product or service (including content*
10 *on an Internet website operated for a commercial*
11 *purpose).*

12 (B) *TRANSACTIONAL OR RELATIONSHIP*
13 *MESSAGES.—The term “commercial electronic*
14 *mail message” does not include an electronic*
15 *mail message the primary purpose of which is to*
16 *facilitate, complete, confirm, provide, or request*
17 *information concerning—*

18 (i) *a commercial transaction,*
19 (ii) *an existing commercial relation-*
20 *ship, formed with or without an exchange of*
21 *consideration, involving the ongoing pur-*
22 *chase or use by the recipient of products or*
23 *services offered by the sender, or*
24 (iii) *an existing employment relation-*
25 *ship,*

1 *that the recipient has previously agreed to enter*
2 *into with the sender,*

3 (C) *REFERENCE TO COMPANY OR*
4 *WEBSITE.—The inclusion of a reference to a*
5 *commercial entity or a link to the website of a*
6 *commercial entity in an electronic mail message*
7 *does not, by itself, cause such message to be treat-*
8 *ed as a commercial electronic mail message for*
9 *purposes of this Act if the contents or cir-*
10 *cumstances of the message indicate a primary*
11 *purpose other than commercial advertisement or*
12 *promotion of a commercial product or service.*

13 (3) *COMMISSION.—The term “Commission”*
14 *means the Federal Trade Commission.*

15 (4) *DOMAIN NAME.—The term “domain name”*
16 *means any alphanumeric designation which is reg-*
17 *istered with or assigned by any domain name reg-*
18 *istrar, domain name registry, or other domain name*
19 *registration authority as part of an electronic address*
20 *on the Internet.*

21 (5) *ELECTRONIC MAIL ADDRESS.—The term*
22 *“electronic mail address” means a destination, com-*
23 *monly expressed as a string of characters, consisting*
24 *of a unique user name or mailbox (commonly referred*
25 *to as the “local part”) and a reference to an Internet*

1 *domain (commonly referred to as the “domain part”),*
2 *to which an electronic mail message can be sent or de-*
3 *livered.*

4 (6) *ELECTRONIC MAIL MESSAGE.*—The term
5 “electronic mail message” means a message sent to an
6 electronic mail address.

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

9 (8) *HEADER INFORMATION.*—The term “header
10 information” means the source, destination, and rout-
11 ing information attached to the beginning of an elec-
12 tronic mail message, including the originating do-
13 main name and originating electronic mail address.

14 (9) *IMPLIED CONSENT.*—The term “implied con-
15 sent”, when used with respect to a commercial elec-
16 tronic mail message, means that—

17 (A) *within the 3-year period ending upon*
18 *receipt of such message, there has been a business*
19 *transaction between the sender and the recipient*
20 *(including a transaction involving the provision,*
21 *free of charge, of information, goods, or services*
22 *requested by the recipient); and*

23 (B) *the recipient was, at the time of such*
24 *transaction or thereafter, provided a clear and*
25 *conspicuous notice of an opportunity not to re-*

1 *ceive unsolicited commercial electronic mail mes-*
2 *sages from the sender and has not exercised such*
3 *opportunity.*

4 *(10) INITIATE.—The term “initiate”, when used*
5 *with respect to a commercial electronic mail message,*
6 *means to originate such message or to procure the*
7 *origination of such message, but shall not include ac-*
8 *tions that constitute routine conveyance of such mes-*
9 *sage.*

10 *(11) INTERNET.—The term “Internet” has the*
11 *meaning given that term in the Internet Tax Freedom*
12 *Act (47 U.S.C. 151 nt).*

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

17 *(13) PROTECTED COMPUTER.—The term “pro-*
18 *tected computer” has the meaning given that term in*
19 *section 1030(e)(2) of title 18, United States Code.*

20 *(14) RECIPIENT.—The term “recipient”, when*
21 *used with respect to a commercial electronic mail*
22 *message, means an authorized user of the electronic*
23 *mail address to which the message was sent or deliv-*
24 *ered. If a recipient of a commercial electronic mail*
25 *message has 1 or more electronic mail addresses in*

1 *addition to the address to which the message was sent*
2 *or delivered, the recipient shall be treated as a sepa-*
3 *rate recipient with respect to each such address. If an*
4 *electronic mail address is reassigned to a new user,*
5 *the new user shall not be treated as a recipient of any*
6 *commercial electronic mail message sent or delivered*
7 *to that address before it was reassigned.*

8 *(15) ROUTINE CONVEYANCE.—The term “routine*
9 *conveyance” means the transmission, routing, relay-*
10 *ing, handling, or storing, through an automatic tech-*
11 *nical process, of an electronic mail message for which*
12 *another person has provided and selected the recipient*
13 *addresses.*

14 *(16) SENDER.—The term “sender”, when used*
15 *with respect to a commercial electronic mail message,*
16 *means a person who initiates such a message and*
17 *whose product, service, or Internet web site is adver-*
18 *tised or promoted by the message.*

19 *(17) UNSOLICITED COMMERCIAL ELECTRONIC*
20 *MAIL MESSAGE.—The term “unsolicited commercial*
21 *electronic mail message” means any commercial elec-*
22 *tronic mail message that is sent to a recipient with-*
23 *out the recipient’s prior affirmative or implied con-*
24 *sent.*

1 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
2 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
3 **ULENT ROUTING INFORMATION.**

4 (a) *IN GENERAL.*—Chapter 63 of title 18, United
5 States Code, is amended by adding at the end the following:

6 **“§ 1351. Unsolicited commercial electronic mail con-**
7 **taining fraudulent transmission informa-**
8 **tion**

9 “(a) *IN GENERAL.*—Any person who initiates the
10 transmission, to a protected computer in the United States,
11 of an unsolicited commercial electronic mail message, with
12 knowledge and intent that the message contains or is accom-
13 panied by header information that is materially false or
14 materially misleading shall be fined or imprisoned for not
15 more than 1 year, or both, under this title. For purposes
16 of this subsection, header information that includes an orig-
17 inating electronic mail address the use of which in connec-
18 tion with the message was not authorized by the legitimate
19 holder of the address, or access to which was obtained by
20 means of false or fraudulent pretense or representations,
21 shall be considered materially misleading.

22 “(b) *DEFINITIONS.*—Any term used in subsection (a)
23 that is defined in section 3 of the CANSPAM Act of 2002
24 has the meaning given it in that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter analysis
2 for chapter 63 of title 18, United States Code, is amended
3 by adding at the end the following:

“1351. Unsolicited commercial electronic mail containing fraudulent routing information.”.

4 SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM- 5 MERCIAL ELECTRONIC MAIL.

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
7 SAGES.—

1 *electronic mail message with a subject heading that*
2 *such person knows would be likely to mislead a re-*
3 *cipient, acting reasonably under the circumstances,*
4 *about a material fact regarding the contents or sub-*
5 *ject matter of the message.*

6 (3) *INCLUSION OF RETURN ADDRESS OR COM-*
7 *PARABLE MECHANISM IN UNSOLICITED COMMERCIAL*
8 *ELECTRONIC MAIL.—*

9 (A) *IN GENERAL.—It is unlawful for any*
10 *person to initiate the transmission to a protected*
11 *computer of an unsolicited commercial electronic*
12 *mail message that does not contain a functioning*
13 *return electronic mail address or other Internet-*
14 *based mechanism, clearly and conspicuously dis-*
15 *played, that—*

16 (i) *a recipient may use to submit, in*
17 *a manner specified by the sender, a reply*
18 *electronic mail message or other form of*
19 *Internet-based communication requesting*
20 *not to receive any future unsolicited com-*
21 *mercial electronic mail messages from that*
22 *sender at the electronic mail address where*
23 *the message was received; and*
24 (ii) *remains capable of receiving such*
25 *messages or communications for no less*

1 *than 30 days after the transmission of the*
2 *original message.*

3 *(B) MORE DETAILED REQUESTS POSSIBLE.*—*Nothing in subparagraph (A) prohibits*
4 *the sender of a commercial electronic mail mes-*
5 *message from, in addition to permitting a recipient*
6 *to submit a request described in subparagraph*
7 *(A)(i), providing the recipient the option of sub-*
8 *mitting more detailed requests concerning the*
9 *types of commercial electronic mail messages*
10 *that the recipient does or does not wish to receive*
11 *in the future from the sender or from some or all*
12 *affiliates of the sender.*

14 *(C) TEMPORARY INABILITY TO RECEIVE*
15 *MESSAGES.*—*A return electronic mail address or*
16 *other mechanism does not fail to satisfy the re-*
17 *quirements of subparagraph (A) if it is unex-*
18 *pectedly and temporarily unable to receive mes-*
19 *sages due to technical or capacity problems, if*
20 *the problem with receiving messages is corrected*
21 *within a reasonable time period.*

22 *(4) PROHIBITION OF TRANSMISSION OF UNSOLIC-*
23 *ITED COMMERCIAL ELECTRONIC MAIL AFTER OBJEC-*
24 *TION.*—*If a recipient makes a request to a sender,*
25 *using a mechanism provided pursuant to paragraph*

1 (3), not to receive some or any unsolicited commercial
2 electronic mail messages from such sender, then it is
3 unlawful—

4 (A) for the sender to initiate the trans-
5 mission to the recipient, more than 10 days after
6 the receipt of such request, of an unsolicited com-
7 mercial electronic mail message that falls within
8 the scope of the request;

9 (B) for any person acting on behalf of the
10 sender to initiate the transmission to the recipi-
11 ent, more than 10 days after the receipt of such
12 request, of an unsolicited commercial electronic
13 mail message that such person knows or con-
14 sciously avoids knowing falls within the scope of
15 the request; or

16 (C) for any person acting on behalf of the
17 sender to assist in initiating the transmission to
18 the recipient, through the provision or selection
19 of addresses to which the message will be sent, of
20 an unsolicited commercial electronic mail mes-
21 sage that the person knows, or consciously avoids
22 knowing, would violate subparagraph (A) or (B).

23 (5) *INCLUSION OF IDENTIFIER, OPT-OUT, AND*
24 *PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL*
25 *ELECTRONIC MAIL.*—It is unlawful for any person to

1 *initiate the transmission of any unsolicited commer-*
2 *cial electronic mail message to a protected computer*
3 *unless the message provides—*

4 *(A) clear and conspicuous identification*
5 *that the message is an advertisement or solicita-*
6 *tion;*

7 *(B) clear and conspicuous notice of the op-*
8 *portunity under paragraph (3) to decline to re-*
9 *ceive further unsolicited commercial electronic*
10 *mail messages from the sender; and*

11 *(C) a valid physical postal address of the*
12 *sender.*

13 *(b) PROHIBITION OF TRANSMISSION OF UNSO-*
14 *LICITED COMMERCIAL ELECTRONIC MAIL FROM ILLE-*
15 *GALLY HARVESTED ELECTRONIC MAIL ADDRESS-*
16 *ES.—*

17 *(1) IN GENERAL.—It is unlawful for any person*
18 *to initiate the transmission, to a protected computer,*
19 *of an unsolicited commercial electronic mail message*
20 *that is unlawful under subsection (a), or to assist in*
21 *the origination of such a message through the provi-*
22 *sion or selection of addresses to which the message*
23 *will be sent, if such person knows that, or acts with*
24 *reckless disregard as to whether—*

17 (c) *AFFIRMATIVE DEFENSE.*—A person shall not be
18 found to have violated paragraph (2), (3), (4), or (5) of
19 subsection (a) if—

1 **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

2 (a) *VIOLATION IS UNFAIR OR DECEPTIVE ACT OR*
3 *PRACTICE.*—*Except as provided in subsection (b), this Act*
4 *shall be enforced by the Commission as if the violation of*
5 *this Act were an unfair or deceptive act or practice pro-*
6 *scribed under section 18(a)(1)(B) of the Federal Trade*
7 *Commission Act (15 U.S.C. 57a(a)(1)(B)).*

8 (b) *ENFORCEMENT BY CERTAIN OTHER AGENCIES.*—

9 *Compliance with this Act shall be enforced—*

10 (1) *under section 8 of the Federal Deposit Insur-*
11 *ance Act (12 U.S.C. 1818), in the case of—*

12 (A) *national banks, and Federal branches*
13 *and Federal agencies of foreign banks, and any*
14 *subsidiaries of such entities (except brokers, deal-*
15 *ers, persons providing insurance, investment*
16 *companies, and investment advisers), by the Of-*
17 *fice of the Comptroller of the Currency;*

18 (B) *member banks of the Federal Reserve*
19 *System (other than national banks), branches*
20 *and agencies of foreign banks (other than Fed-*
21 *eral branches, Federal agencies, and insured*
22 *State branches of foreign banks), commercial*
23 *lending companies owned or controlled by for-*
24 *ign banks, organizations operating under sec-*
25 *tion 25 or 25A of the Federal Reserve Act (12*
26 *U.S.C. 601 and 611), and bank holding compa-*

1 *nies and their nonbank subsidiaries or affiliates*
2 *(except brokers, dealers, persons providing insur-*
3 *ance, investment companies, and investment ad-*
4 *visers), by the Board;*

5 *(C) banks insured by the Federal Deposit*
6 *Insurance Corporation (other than members of*
7 *the Federal Reserve System) insured State*
8 *branches of foreign banks, and any subsidiaries*
9 *of such entities (except brokers, dealers, persons*
10 *providing insurance, investment companies, and*
11 *investment advisers), by the Board of Directors*
12 *of the Federal Deposit Insurance Corporation;*
13 *and*

14 *(D) savings associations the deposits of*
15 *which are insured by the Federal Deposit Insur-*
16 *ance Corporation, and any subsidiaries of such*
17 *savings associations (except brokers, dealers, per-*
18 *sons providing insurance, investment companies,*
19 *and investment advisers), by the Director of the*
20 *Office of Thrift Supervision;*

21 *(2) under the Federal Credit Union Act (12*
22 *U.S.C. 1751 et seq.) by the Board of the National*
23 *Credit Union Administration with respect to any*
24 *Federally insured credit union, and any subsidiaries*
25 *of such a credit union;*

22 (8) under the Packers and Stockyards Act, 1921
23 (7 U.S.C. 181 et seq.) (except as provided in section
24 406 of that Act (7 U.S.C. 226, 227)), by the Secretary

1 *of Agriculture with respect to any activities subject to*
2 *that Act;*

3 *(9) under the Farm Credit Act of 1971 (12*
4 *U.S.C. 2001 et seq.) by the Farm Credit Administra-*
5 *tion with respect to any Federal land bank, Federal*
6 *land bank association, Federal intermediate credit*
7 *bank, or production credit association; and*

8 *(10) under the Communications Act of 1934 (47*
9 *U.S.C. 151 et seq.) by the Federal Communications*
10 *Commission with respect to any person subject to the*
11 *provisions of that Act.*

12 *(c) EXERCISE OF CERTAIN POWERS.—For the purpose*
13 *of the exercise by any agency referred to in subsection (b)*
14 *of its powers under any Act referred to in that subsection,*
15 *a violation of this Act is deemed to be a violation of a re-*
16 *quirement imposed under that Act. In addition to its pow-*
17 *ers under any provision of law specifically referred to in*
18 *subsection (b), each of the agencies referred to in that sub-*
19 *section may exercise, for the purpose of enforcing compli-*
20 *ance with any requirement imposed under this Act, any*
21 *other authority conferred on it by law.*

22 *(d) ACTIONS BY THE COMMISSION.—The Commission*
23 *shall prevent any person from violating this Act in the same*
24 *manner, by the same means, and with the same jurisdic-*
25 *tion, powers, and duties as though all applicable terms and*

1 provisions of the Federal Trade Commission Act (15 U.S.C.
2 41 et seq.) were incorporated into and made a part of this
3 Act. Any entity that violates any provision of that subtitle
4 is subject to the penalties and entitled to the privileges and
5 immunities provided in the Federal Trade Commission Act
6 in the same manner, by the same means, and with the same
7 jurisdiction, power, and duties as though all applicable
8 terms and provisions of the Federal Trade Commission Act
9 were incorporated into and made a part of that subtitle.

10 (e) ENFORCEMENT BY STATES.—

11 (1) CIVIL ACTION.—In any case in which the at-
12 torney general of a State has reason to believe that an
13 interest of the residents of that State has been or is
14 threatened or adversely affected by any person engag-
15 ing in a practice that violates section 5 of this Act,
16 the State, as parens patriae, may bring a civil action
17 on behalf of the residents of the State in a district
18 court of the United States of appropriate jurisdiction
19 or in any other court of competent jurisdiction—

20 (A) to enjoin that practice; or

21 (B) to obtain damages on behalf of residents
22 of the State, in an amount equal to the greater
23 of—

24 (i) the actual monetary loss suffered by
25 such residents; or

3 (2) *STATUTORY DAMAGES.—*

1 from \$500,000 to an amount not to exceed
2 \$1,500,000.

3 (3) *ATTORNEY FEES.*—*In the case of any success-*
4 *ful action under paragraph (1), the State shall be*
5 *awarded the costs of the action and reasonable attor-*
6 *ney fees as determined by the court.*

7 (4) *NOTICE.*—

8 (A) *PRE-FILING.*—*Before filing an action*
9 *under paragraph (1), an attorney general shall*
10 *provide to the Commission—*

11 (i) *written notice of that action; and*
12 (ii) *a copy of the complaint for that*
13 *action.*

14 (B) *CONTEMPORANEOUS.*—*If an attorney*
15 *general determines that it is not feasible to pro-*
16 *vide the notice required by subparagraph (A) be-*
17 *fore filing the action, the notice and a copy of*
18 *the complaint shall be provided to the Commis-*
19 *sion when the action is filed.*

20 (5) *INTERVENTION.*—*If the Commission receives*
21 *notice under paragraph (4), it—*

22 (A) *may intervene in the action that is the*
23 *subject of the notice; and*
24 (B) *has the right—*

9 (A) conduct investigations;

10 (B) administer oaths or affirmations; or

14 (7) 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—*

23 (i) is an inhabitant; or

24 (ii) maintains a physical place of busi-
25 ness.

11 (f) ACTION BY PROVIDER OF INTERNET ACCESS SERV-
12 ICE.—

3 (2) *STATUTORY DAMAGES.*—

1 from \$500,000 to an amount not to exceed
2 \$1,500,000.

3 (3) *ATTORNEY FEES.*—In any action brought
4 pursuant to paragraph (1), the court may, in its dis-
5 cretion, require an undertaking for the payment of
6 the costs of such action, and assess reasonable costs,
7 including reasonable attorneys' fees, against any
8 party.

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

10 (a) *FEDERAL LAW.*—

11 (1) *Nothing in this Act shall be construed to im-
12 pair the enforcement of section 223 or 231 of the
13 Communications Act of 1934 (47 U.S.C. 223 or 231,
14 respectively), chapter 71 (relating to obscenity) or 110
15 (relating to sexual exploitation of children) of title 18,
16 United States Code, or any other Federal criminal
17 statute.*

18 (2) *Nothing in this Act shall be construed to af-
19 fect in any way the Commission's authority to bring
20 enforcement actions under FTC Act for materially
21 false or deceptive representations in commercial elec-
22 tronic mail messages.*

23 (b) *STATE LAW.*—

24 (1) *IN GENERAL.*—This Act supersedes any State
25 or local government statute, regulation, or rule regu-

1 *lating the use of electronic mail to send commercial*
2 *messages.*

3 *(2) EXCEPTIONS.—Except as provided in para-*
4 *graph (3), this Act does not supersede or pre-empt—*

5 *(A) State trespass, contract, or tort law or*
6 *any civil action thereunder; or*

7 *(B) any provision of Federal, State, or local*
8 *criminal law or any civil remedy available*
9 *under such law that relates to acts of computer*
10 *fraud perpetrated by means of the unauthorized*
11 *transmission of unsolicited commercial electronic*
12 *mail messages.*

13 *(3) LIMITATION ON EXCEPTIONS.—Paragraph*
14 *(2) does not apply to a State or local government*
15 *statute, regulation, or rule that treats the mere send-*
16 *ing of unsolicited commercial electronic mail in a*
17 *manner that complies with this Act as sufficient to*
18 *constitute a violation of such statute, regulation, or*
19 *rule or to create a cause of action thereunder.*

20 *(c) NO EFFECT ON POLICIES OF PROVIDERS OF*
21 *INTERNET ACCESS SERVICE.—Nothing in this Act shall be*
22 *construed to have any effect on the lawfulness or unlawful-*
23 *ness, under any other provision of law, of the adoption, im-*
24 *plementation, or enforcement by a provider of Internet ac-*

1 *cess service of a policy of declining to transmit, route, relay,*
2 *handle, or store certain types of electronic mail messages.*

3 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
4 **ELECTRONIC MAIL.**

5 *(a) IN GENERAL.—Not later than 24 months after the*
6 *date of the enactment of this Act, the Commission, in con-*
7 *sultation with the Department of Justice and other appro-*
8 *priate agencies, shall submit a report to the Congress that*
9 *provides a detailed analysis of the effectiveness and enforce-*
10 *ment of the provisions of this Act and the need (if any)*
11 *for the Congress to modify such provisions.*

12 *(b) REQUIRED ANALYSIS.—The Commission shall in-*
13 *clude in the report required by subsection (a) an analysis*
14 *of the extent to which technological and marketplace devel-*
15 *opments, including changes in the nature of the devices*
16 *through which consumers access their electronic mail mes-*
17 *sages, may affect the practicality and effectiveness of the*
18 *provisions of this Act.*

19 **SEC. 9. SEPARABILITY.**

20 *If any provision of this Act or the application thereof*
21 *to any person or circumstance is held invalid, the remain-*
22 *der of this Act and the application of such provision to*
23 *other persons or circumstances shall not be affected.*

1 **SEC. 10. EFFECTIVE DATE.**

2 *The provisions of this Act shall take effect 120 days*
3 *after the date of the enactment of this Act.*

Calendar No. 735

107TH CONGRESS
2D SESSION

S. 630

[Report No. 107-318]

A BILL

To prohibit senders of unsolicited commercial electronic mail from disguising the source of their messages, to give consumers the choice to cease receiving a sender's unsolicited commercial electronic mail messages, and for other purposes.

OCTOBER 16, 2002

Reported with an amendment