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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 crit-
12 ical 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 (4) The receipt of unsolicited commercial elec-
2 tronic mail may result in costs to recipients who
3 cannot refuse to accept such mail and who incur
4 costs for the storage of such mail, or for the time
5 spent accessing, reviewing, and discarding such mail,
6 or for both.

7 (5) Unsolicited commercial electronic mail may
8 impose significant monetary costs on providers of
9 Internet access services, businesses, and educational
10 and nonprofit institutions that carry and receive
11 such mail, as there is a finite volume of mail that
12 such providers, businesses, and institutions can han-
13 dle without further investment. The sending of such
14 mail is increasingly and negatively affecting the
15 quality of service provided to customers of Internet
16 access service, and shifting costs from the sender of
17 the advertisement to the provider of Internet access
18 service and the recipient.

19 (6) While some senders of unsolicited commer-
20 cial electronic mail messages provide simple and reli-
21 able ways for recipients to reject (or “opt-out” of)
22 receipt of unsolicited commercial electronic mail
23 from such senders in the future, other senders pro-
24 vide no such “opt-out” mechanism, or refuse to

1 honor the requests of recipients not to receive elec-
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 MESSAGE.—The term “commercial electronic mail message” means any electronic mail message the pri-

1 many 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.

12 ~~(4) DOMAIN NAME.~~—The term “domain name”
 13 means any alphanumeric designation which is reg-
 14 istered with or assigned by any domain name reg-
 15 istrar, domain name registry, or other domain name
 16 registration authority as part of an electronic ad-
 17 dress on the Internet.

18 ~~(5) ELECTRONIC MAIL ADDRESS.~~—

19 ~~(A) IN GENERAL.~~—The term “electronic
 20 mail address” means a destination (commonly
 21 expressed as a string of characters) to which
 22 electronic mail can be sent or delivered.

23 ~~(B) INCLUSION.~~—In the case of the Inter-
 24 net, the term “electronic mail address” may in-
 25 clude an electronic mail address consisting of a

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 cal-
20 culated, 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.

(B) An electronic mail address that meets the requirements of subparagraph (A) shall not be excluded from this definition because of a temporary inability to receive electronic mail messages due to technical problems; provided steps are taken to correct such technical problems within a reasonable time period.

(8) HEADER INFORMATION.—The term “header information” means the source, destination, and routing information attached to the beginning of an electronic mail message, including the originating domain name and originating electronic mail address.

(9) IMPLIED CONSENT.—The term “implied consent”, when used with respect to a commercial electronic mail message, means—

(A) within the 5-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

(B) the recipient was, at the time of such transaction or thereafter, provided a clear and 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.

1 (14) ~~RECIPIENT.~~—The term “recipient”, when
 2 used with respect to a commercial electronic mail
 3 message, means the addressee of such message. If
 4 an addressee of a commercial electronic mail mes-
 5 sage has 1 or more electronic mail addresses in addi-
 6 tion to the address to which the message was ad-
 7 dressed, the addressee shall be treated as a separate
 8 recipient with respect to each such address.

9 (15) ~~ROUTINE CONVEYANCE.~~—The term “rou-
 10 tine conveyance” means the transmission, routing,
 11 relaying, handling, or storing, through an automatic
 12 technical process, of an electronic mail message for
 13 which another person has provided and selected the
 14 recipient addresses.

15 (16) ~~SENDER.~~—The term “sender”, when used
 16 with respect to a commercial electronic mail mes-
 17 sage, means a person who initiates such a message
 18 and whose product, service, or Internet web site is
 19 advertised or promoted by the message, but does not
 20 include any person, including a provider of Internet
 21 access service, whose role with respect to the mes-
 22 sage is limited to routine conveyance of the message.

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

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

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

7 (ii) to a recipient who, subsequent to
8 the establishment of affirmative or implied
9 consent under subparagraph (i), has ex-
10 pressed, in a reply submitted pursuant to
11 section 5(a)(3), or in response to any other
12 opportunity the sender may have provided
13 to the recipient, a desire not to receive
14 commercial electronic mail messages from
15 the sender.

16 (B) ~~EXCLUSION.~~—Notwithstanding sub-
17 paragraph (A), the term “unsolicited commer-
18 cial electronic mail message” does not include
19 an electronic mail message sent by or on behalf
20 of one or more lawful owners of copyright, pat-
21 ent, publicity, or trademark rights to an unau-
22 thorized user of protected material notifying
23 such user that the use is unauthorized and re-
24 questing 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 COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.**

6 (a) IN GENERAL.—Chapter 63 of title 18, 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.

8 (4) PROHIBITION OF TRANSMISSION OF UNSO-
9 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
10 JECTION.—If a recipient makes a request to a send-
11 er, through an electronic mail message sent to an
12 electronic mail address provided by the sender pur-
13 suant to paragraph (3), not to receive further elec-
14 tronic mail messages from that sender, it shall be
15 unlawful for the sender, or any person acting on be-
16 half of the sender, to initiate the transmission of an
17 unsolicited commercial electronic mail message to
18 such a recipient within the United States more than
19 10 days after receipt of such request.

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 unsolic-
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 (B) section 8 of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1818), by the Director of
3 the Office of Thrift Supervision, in the case of
4 a savings association the deposits of which are
5 insured by the Federal Deposit Insurance Cor-
6 poration;

7 (C) the Federal Credit Union Act (12
8 U.S.C. 1751 et seq.) by the National Credit
9 Union Administration Board with respect to
10 any Federal credit union;

11 (D) part A of subtitle VII of title 49,
12 United States Code, by the Secretary of Trans-
13 portation with respect to any air carrier or for-
14 eign air carrier subject to that part;

15 (E) the Packers and Stockyards Act, 1921
16 (7 U.S.C. 181 et seq.) (except as provided in
17 section 406 of that Act (7 U.S.C. 226, 227)),
18 by the Secretary of Agriculture with respect to
19 any activities subject to that Act;

20 (F) the Farm Credit Act of 1971 (12
21 U.S.C. 2001 et seq.) by the Farm Credit Ad-
22 ministration with respect to any Federal land
23 bank, Federal land bank association, Federal
24 intermediate credit bank, or production credit
25 association; and

(G) the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person 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.

(c) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appro-

1 piate 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 vio-
 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 recov-
 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—

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

3 (B) shall have the right—

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

6 (ii) to file a petition for appeal.

7 (7) CONSTRUCTION.—For purposes of bringing
8 any civil action under paragraph (1), nothing in this
9 Act shall be construed to prevent an attorney gen-
10 eral of a State from exercising the powers conferred
11 on the attorney general by the laws of that State
12 to—

13 (A) conduct investigations;

14 (B) administer oaths or affirmations; or

15 (C) compel the attendance of witnesses or
16 the production of documentary and other evi-
17 dence.

18 (8) VENUE; SERVICE OF PROCESS.—

19 (A) VENUE.—Any action brought under
20 paragraph (1) may be brought in the district
21 court of the United States that meets applicable
22 requirements relating to venue under section
23 1391 of title 28, United States Code.

1 (B) SERVICE OF PROCESS.—In an action
 2 brought under paragraph (1), process may be
 3 served in any district in which the defendant—

4 (i) is an inhabitant; or

5 (ii) maintains a physical place of busi-
 6 ness.

7 (9) LIMITATION ON STATE ACTION WHILE FED-
 8 ERAL ACTION IS PENDING.—If the Commission or
 9 other appropriate Federal agency under subsection
 10 (b) has instituted a civil action or an administrative
 11 action for violation of this Act, no State attorney
 12 general may bring an action under this subsection
 13 during the pendency of that action against any de-
 14 fendant named in the complaint of the Commission
 15 or the other agency for any violation of this Act al-
 16 leged in the complaint.

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

19 (1) ACTION AUTHORIZED.—A provider of Inter-
 20 net access service adversely affected by a violation of
 21 section 5 may bring a civil action in any district
 22 court of the United States with jurisdiction over the
 23 defendant, or in any other court of competent juris-
 24 diction, to—

1 (A) enjoin further violation by the defend-
2 ant; or

3 (B) recover damages in an amount equal
4 to the greater of—

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

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

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

13 (A) the amount determined by multiplying
14 the number of willful, knowing, or negligent vio-
15 lations by an amount, in the discretion of the
16 court, of up to \$10 (with each separately ad-
17 dressed unlawful message carried over the fa-
18 cilities of the provider of Internet access service
19 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 recov-
 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 ~~(c) AFFIRMATIVE DEFENSE.—~~A person shall not be
 25 liable for damages under subsection ~~(c)(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 petrated 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 unsolic-*
 2 *ited 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.*—

8 (1) *PROHIBITION OF FALSE OR MISLEADING*
 9 *TRANSMISSION INFORMATION.*—*It is unlawful for any*
 10 *person to initiate the transmission, to a protected*
 11 *computer, of a commercial electronic mail message*
 12 *that contains, or is accompanied by, header informa-*
 13 *tion that is materially or intentionally false or mate-*
 14 *rially or intentionally misleading. For purposes of*
 15 *this paragraph, header information that includes an*
 16 *originating electronic mail address the use of which*
 17 *in connection with the message was not authorized by*
 18 *the legitimate holder of the address, or access to which*
 19 *was obtained by means of false or fraudulent pretense*
 20 *or representations, shall be considered materially mis-*
 21 *leading.*

22 (2) *PROHIBITION OF DECEPTIVE SUBJECT HEAD-*
 23 *INGS.*—*It is unlawful for any person to initiate the*
 24 *transmission to a protected computer of a commercial*

1 *electronic mail message with a subject heading that*
 2 *such person knows would be likely to mislead a re-*
 3 *ipient, 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 POS-*
 4 *SIBLE.—Nothing in subparagraph (A) prohibits*
 5 *the sender of a commercial electronic mail mes-*
 6 *sage from, in addition to permitting a recipient*
 7 *to submit a request described in subparagraph*
 8 *(A)(i), providing the recipient the option of sub-*
 9 *mitting more detailed requests concerning the*
 10 *types of commercial electronic mail messages*
 11 *that the recipient does or does not wish to receive*
 12 *in the future from the sender or from some or all*
 13 *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*

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

(A) for the sender to initiate the transmission to the recipient, more than 10 days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request; or

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

(5) *INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL 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 sollicita-*
 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—*

1 (A) the electronic mail address of the recipi-
 2 ent was obtained, using an automated means,
 3 from an Internet website or proprietary online
 4 service operated by another person; or

5 (B) the website or proprietary online service
 6 from which the address was obtained included, at
 7 the time the address was obtained, a notice stat-
 8 ing that the operator of such a website or propri-
 9 etary online service will not give, sell, or other-
 10 wise transfer addresses maintained by such site
 11 or service to any other party for the purpose of
 12 initiating, or enabling others to initiate, unsolic-
 13 ited electronic mail messages.

14 (2) *DISCLAIMER.*—Nothing in this subsection
 15 creates an ownership or proprietary interest in such
 16 email addresses.

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—

20 (1) that person has established and implemented,
 21 with due care, reasonable practices and procedures to
 22 effectively prevent violations of this section; and

23 (2) the violation of this section occurred despite
 24 good faith efforts to maintain compliance with such
 25 practices and procedures.

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 *oreign 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;*

1 (3) *under the Securities Exchange Act of 1934*
2 (15 U.S.C. 78a et seq.) *by the Securities and Ex-*
3 *change Commission with respect to any broker or*
4 *dealer;*

5 (4) *under the Investment Company Act of 1940*
6 (15 U.S.C. 80a–1 et seq.) *by the Securities and Ex-*
7 *change Commission with respect to investment com-*
8 *panies;*

9 (5) *under the Investment Advisers Act of 1940*
10 (15 U.S.C. 80b–1 et seq.) *by the Securities and Ex-*
11 *change Commission with respect to investment advis-*
12 *ers registered under that Act;*

13 (6) *under State insurance law in the case of any*
14 *person engaged in providing insurance, by the appli-*
15 *cable State insurance authority of the State in which*
16 *the person is domiciled, subject to section 104 of the*
17 *Gramm-Bliley-Leach Act (15 U.S.C. 6701);*

18 (7) *under part A of subtitle VII of title 49,*
19 *United States Code, by the Secretary of Transpor-*
20 *tation with respect to any air carrier or foreign air*
21 *carrier subject to that part;*

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*

1 (ii) the amount determined under
2 paragraph (2).

3 (2) *STATUTORY DAMAGES.*—

4 (A) *IN GENERAL.*—For purposes of para-
5 graph (1)(B)(ii), the amount determined under
6 this paragraph is the amount calculated by mul-
7 tiplying the number of willful, knowing, or neg-
8 ligent violations by an amount, in the discretion
9 of the court, of up to \$10 (with each separately
10 addressed unlawful message received by such
11 residents treated as a separate violation). In de-
12 termining the per-violation penalty under this
13 subparagraph, the court shall take into account
14 the degree of culpability, any history of prior
15 such conduct, ability to pay, the extent of eco-
16 nomic gain resulting from the violation, and
17 such other matters as justice may require.

18 (B) *LIMITATION.*—For any violation of
19 paragraph (2), (3), (4), or (5) of section 5(a), the
20 amount determined under subparagraph (A)
21 may not exceed \$500,000, except that if the court
22 finds that the defendant committed the violation
23 willfully and knowingly, the court may increase
24 the limitation established by this paragraph

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—*

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

3 (ii) to file a petition for appeal.

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

9 (A) conduct investigations;

10 (B) administer oaths or affirmations; or

11 (C) compel the attendance of witnesses or
12 the production of documentary and other evi-
13 dence.

14 (7) VENUE; SERVICE OF PROCESS.—

15 (A) VENUE.—Any action brought under
16 paragraph (1) may be brought in the district
17 court of the United States that meets applicable
18 requirements relating to venue under section
19 1391 of title 28, United States Code.

20 (B) SERVICE OF PROCESS.—In an action
21 brought under paragraph (1), process may be
22 served in any district in which the defendant—

23 (i) is an inhabitant; or

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

1 (8) *LIMITATION ON STATE ACTION WHILE FED-*
 2 *ERAL ACTION IS PENDING.—If the Commission or*
 3 *other appropriate Federal agency under subsection (b)*
 4 *has instituted a civil action or an administrative ac-*
 5 *tion for violation of this Act, no State attorney gen-*
 6 *eral may bring an action under this subsection dur-*
 7 *ing the pendency of that action against any defendant*
 8 *named in the complaint of the Commission or the*
 9 *other agency for any violation of this Act alleged in*
 10 *the complaint.*

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

13 (1) *ACTION AUTHORIZED.—A provider of Inter-*
 14 *net access service adversely affected by a violation of*
 15 *section 5 may bring a civil action in any district*
 16 *court of the United States with jurisdiction over the*
 17 *defendant, or in any other court of competent juris-*
 18 *diction, to—*

19 (A) *enjoin further violation by the defend-*
 20 *ant; or*

21 (B) *recover damages in an amount equal to*
 22 *the greater of—*

23 (i) *actual monetary loss incurred by*
 24 *the provider of Internet access service as a*
 25 *result of such violation; or*

1 (ii) the amount determined under
2 paragraph (2).

3 (2) *STATUTORY DAMAGES.*—

4 (A) *IN GENERAL.*—For purposes of para-
5 graph (1)(B)(ii), the amount determined under
6 this paragraph is the amount calculated by mul-
7 tiplying the number of willful, knowing, or neg-
8 ligent violations by an amount, in the discretion
9 of the court, of up to \$10 (with each separately
10 addressed unlawful message received by such
11 residents treated as a separate violation). In de-
12 termining the per-violation penalty under this
13 subparagraph, the court shall take into account
14 the degree of culpability, any history of prior
15 such conduct, ability to pay, the extent of eco-
16 nomic gain resulting from the violation, and
17 such other matters as justice may require.

18 (B) *LIMITATION.*—For any violation of
19 paragraph (2), (3), (4), or (5) of section 5(a), the
20 amount determined under subparagraph (A)
21 may not exceed \$500,000, except that if the court
22 finds that the defendant committed the violation
23 willfully and knowingly, the court may increase
24 the limitation established by this paragraph

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 unlawfulness,*
 23 *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