

108TH CONGRESS
1ST SESSION

H. R. 2515

To prevent unsolicited commercial electronic mail.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2003

Mrs. WILSON of New Mexico (for herself, Mr. GREEN of Texas, Mr. PICKERING, Mr. DINGELL, Mrs. CUBIN, Mr. CONYERS, Mr. SHADEGG, Mr. MARKEY, Mr. PITTS, Mr. BOUCHER, Mr. WALDEN of Oregon, Ms. ESHOO, Mr. TERRY, Mr. STUPAK, Mr. PENCE, Ms. MCCARTHY of Missouri, Mr. FRELINGHUYSEN, Mr. STRICKLAND, Mr. MCINNIS, Mrs. CAPPS, Ms. SCHAKOWSKY, Mr. RODRIGUEZ, Mr. BACA, Mr. FRANK of Massachusetts, Mr. CRAMER, Mr. SKELTON, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent unsolicited commercial electronic mail.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Anti-Spam Act of 2003”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
 Sec. 2. Congressional findings and policy.

TITLE I—PROTECTIONS AGAINST CERTAIN COMMERCIAL
ELECTRONIC MAIL

- Sec. 101. Restrictions on commercial electronic mail.
 Sec. 102. Private right of action for providers of Internet access service.
 Sec. 103. Actions by States.
 Sec. 104. Attorney's fees.
 Sec. 105. Enforcement by Federal Trade Commission.
 Sec. 106. Exclusiveness of remedies.

TITLE II—AMENDMENTS TO TITLE 18, UNITED STATES CODE

- Sec. 201. Criminal penalties and related provisions.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Regulations and report.
 Sec. 302. Effect on other laws.
 Sec. 303. Study of effectiveness and enforcement.
 Sec. 304. Definitions.
 Sec. 305. Effective date.

1 SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

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

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

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

1 (3) Commercial electronic mail can be an im-
2 portant mechanism through which businesses adver-
3 tise and contact consumers in the online environ-
4 ment.

5 (4) The receipt of unwanted commercial elec-
6 tronic mail may result in costs to recipients who
7 cannot refuse to accept such mail and who incur
8 costs for the storage of such mail, or for the time
9 spent accessing, reviewing, and discarding such mail,
10 or for both.

11 (5) Unwanted commercial electronic mail may
12 impose significant monetary costs on Internet access
13 services, businesses, and educational and nonprofit
14 institutions that carry and receive such mail, as
15 there is a finite volume of mail that such providers,
16 businesses, and institutions can handle without fur-
17 ther investment. The sending of such mail is increas-
18 ingly and negatively affecting the quality of service
19 provided to customers of Internet access service, and
20 shifting costs from the sender of the advertisement
21 to the Internet access service.

22 (6) While some senders of commercial electronic
23 mail messages provide simple and reliable ways for
24 recipients to reject (or “opt-out” of) receipt of unso-
25 solicited commercial electronic mail from such senders

1 in the future, other senders provide no such “opt-
2 out” mechanism, or refuse to honor the requests of
3 recipients not to receive electronic mail from such
4 senders in the future, or both.

5 (7) An increasing number of senders of com-
6 mercial electronic mail purposefully disguise the
7 source of such mail so as to prevent recipients from
8 responding to such mail quickly and easily.

9 (8) Many senders of unsolicited commercial
10 electronic mail collect or harvest electronic mail ad-
11 dresses of potential recipients without the knowledge
12 of those recipients and in violation of the rules or
13 terms of service of the database from which such ad-
14 dresses are collected.

15 (9) Because recipients of unwanted commercial
16 electronic mail are often unable to avoid the receipt
17 of such mail through reasonable means, such mail
18 may invade the privacy of recipients and infringe on
19 their privacy rights.

20 (10) In legislating against certain abuses on the
21 Internet, Congress should be very careful to avoid
22 infringing in any way upon constitutionally protected
23 rights, including the rights of assembly, free speech,
24 and privacy.

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

4 (1) there is substantial government interest in
5 regulation of commercial electronic mail;

6 (2) Consumers and Internet service providers
7 should not be compelled to bear the costs of un-
8 wanted commercial electronic mail; and

9 (3) recipients of commercial electronic mail
10 have a right to decline to receive or have their chil-
11 dren receive unwanted commercial electronic mail.

12 **TITLE I—PROTECTIONS AGAINST**
13 **CERTAIN COMMERCIAL ELEC-**
14 **TRONIC MAIL**

15 **SEC. 101. RESTRICTIONS ON COMMERCIAL ELECTRONIC**
16 **MAIL.**

17 (a) REQUIRED INCLUSIONS IN COMMERCIAL ELEC-
18 TRONIC MAIL.—

19 (1) INCLUSION OF IDENTIFIER, OPT-OUT, E-
20 MAIL ADDRESS, AND PHYSICAL ADDRESS.—No per-
21 son may initiate in or affecting interstate commerce
22 the transmission, to a covered computer, of any com-
23 mercial electronic mail message unless the message
24 contains all of the following:

1 (A) IDENTIFICATION.—Clear and con-
2 spicuous identification that the message is a
3 commercial electronic mail message.

4 (B) NOTICE OF OPT-OUT.—Clear and con-
5 spicuous notice of the opportunity under sub-
6 paragraph (C) to decline to receive future com-
7 mercial electronic mail messages from the send-
8 er or any covered affiliate of the sender.

9 (C) E-MAIL ADDRESS OR OTHER MECHA-
10 NISM TO OPT-OUT.—A functioning return elec-
11 tronic mail address or other Internet-based
12 mechanism, clearly and conspicuously displayed,
13 that—

14 (i) a recipient may use to submit, in
15 a manner specified by the sender, a reply
16 electronic mail message or other form of
17 Internet-based communication requesting
18 not to receive any future commercial elec-
19 tronic mail messages from that sender, or
20 any covered affiliate of the sender, at the
21 electronic mail address where the message
22 was received;

23 (ii) in the case of any such other
24 Internet-based mechanism, when so used,
25 directly submits such a request or clearly

1 and conspicuously provides a manner for
2 submitting such a request; and

3 (iii) remains capable of receiving such
4 messages or communications for no less
5 than 30 days after the transmission of the
6 original message.

7 (D) STREET ADDRESS.—A valid physical
8 street address of the sender.

9 (2) MORE DETAILED REQUESTS POSSIBLE.—In
10 a message complying with the requirements of para-
11 graph (1)(C), the sender of a commercial electronic
12 mail message may also include, in the message, op-
13 tions for the recipient to submit more detailed re-
14 quests concerning the types of commercial electronic
15 mail messages that the recipient does or does not
16 wish to receive in the future from the sender, or a
17 covered affiliate of the sender, based upon products,
18 services, divisions, organizations, companies, or
19 other selections.

20 (3) TEMPORARY INABILITY TO RECEIVE MES-
21 SAGES.—A return electronic mail address or other
22 mechanism does not fail to satisfy the requirements
23 of paragraph (1)(C) if it is unexpectedly and tempo-
24 rarily unable to receive messages due to a problem
25 beyond the control of the sender, if the problem with

1 receiving messages is corrected within a reasonable
2 time period.

3 (b) PROHIBITION OF TRANSMISSION OF COMMERCIAL
4 ELECTRONIC MAIL AFTER OBJECTION.—

5 (1) IN GENERAL.—If a recipient makes a re-
6 quest to a sender, using a mechanism provided pur-
7 suant to subsection (a)(1)(C), not to receive some or
8 any commercial electronic mail messages from such
9 sender, or any covered affiliate of the sender, except
10 as provided in paragraph (2)—

11 (A) the sender, or any covered affiliate of
12 the sender, may not initiate the transmission to
13 the recipient, during the 5-year period begin-
14 ning the shortest period of time after the re-
15 ceipt of such request as is reasonable to allow
16 effectuation of such request, as the Commission
17 shall determine, of any commercial electronic
18 mail message that falls within the scope of the
19 request, except that during any period begin-
20 ning upon the effective date under section 305
21 and ending upon the determination by the Com-
22 mission regarding such shortest reasonable pe-
23 riod, such 5-year period shall begin 10 days
24 after receipt of such request;

1 (B) no person acting on behalf of the send-
2 er or any covered affiliate of the sender may
3 initiate the transmission to the recipient, during
4 the 5-year period beginning the shortest period
5 of time after the receipt by such person of such
6 request as is reasonable to allow effectuation of
7 such request, as the Commission shall deter-
8 mine, of any commercial electronic mail mes-
9 sage that falls within the scope of the request,
10 except that during any period beginning upon
11 the effective date under section 305 and ending
12 upon the determination by the Commission re-
13 garding such shortest reasonable period, such
14 5-year period shall begin 10 days after receipt
15 of such request;

16 (C) no person acting on behalf of the send-
17 er, or any covered affiliate of the sender, may
18 assist in initiating the transmission to the re-
19 cipient, through the provision or selection of ad-
20 dresses to which the message will be trans-
21 mitted, of any commercial electronic mail mes-
22 sage that would violate subparagraph (A) or
23 (B); and

24 (D) the sender, or any covered affiliate of
25 the sender, may not sell, lease, exchange, or

1 otherwise transfer or release the electronic mail
2 address of the recipient (including through any
3 transaction or other transfer involving mailing
4 lists bearing the electronic mail address of the
5 recipient) for any purpose other than compli-
6 ance with this Act or any other provision of
7 law.

8 (2) SUBSEQUENT CONSENT TO COMMERCIAL
9 ELECTRONIC MAIL MESSAGES.—Notwithstanding a
10 recipient’s most recent request described in para-
11 graph (1) to a sender, such request shall not be con-
12 sidered to have been made for purposes of such
13 paragraph, with respect to a commercial electronic
14 mail message if—

15 (A) the message falls within the scope of
16 an express and unambiguous invitation or con-
17 sent granted by the recipient subsequent to
18 such request made; and

19 (B) the recipient had clear and con-
20 spicuous notice, at the time such invitation or
21 consent was granted, of—

22 (i) the fact that the recipient was
23 granting the invitation or consent;

24 (ii) the scope of the invitation or con-
25 sent, including what types of commercial

1 electronic mail messages would be covered
2 by the invitation or consent and what
3 senders or types of senders, if any, other
4 than the party to whom the invitation or
5 consent was communicated would be cov-
6 ered by the invitation or consent; and

7 (iii) the mechanism under subsection
8 (a)(1)(C).

9 (c) PROHIBITION OF COMMERCIAL ELECTRONIC
10 MAIL WITH FALSE OR MISLEADING HEADER INFORMA-
11 TION OR SUBJECT HEADINGS.—No person may initiate
12 in or affecting interstate commerce the transmission, to
13 a covered computer, of any commercial electronic mail
14 message or any commercial transactional electronic mail
15 message, that—

16 (1) contains or is accompanied by header infor-
17 mation that is false or misleading (including header
18 information that uses a third party's domain name
19 without the third party's permission); for purposes
20 of this paragraph, header information that includes
21 an originating electronic mail address the use of
22 which in connection with the message was not au-
23 thorized by a legitimate holder of the address, or ac-
24 cess to which was obtained by means of false or

1 fraudulent pretense or representations, shall be con-
2 sidered misleading; or

3 (2) contains a subject heading that would be
4 likely to mislead a recipient, acting reasonably under
5 the circumstances, about a material fact regarding
6 the contents or subject matter of the message.

7 (d) PROHIBITION OF TRANSMISSION OF CERTAIN
8 COMMERCIAL ELECTRONIC MAIL FROM ILLEGALLY HAR-
9 VESTED ELECTRONIC MAIL ADDRESSES.—

10 (1) IN GENERAL.—No person may initiate in or
11 affecting interstate commerce the transmission, to a
12 covered computer, of a commercial electronic mail
13 message that is prohibited under subsection (a), (b),
14 or (c), or assist in the origination of such a message
15 through the provision or selection of electronic mail
16 addresses to which the transmission of such message
17 is initiated, if—

18 (A) the electronic mail address of the re-
19 cipient was obtained, using an automated
20 means, from an Internet website or proprietary
21 online service operated by another person; and

22 (B) the website or proprietary online serv-
23 ice from which the address was obtained in-
24 cluded, at the time the address was obtained, a
25 notice stating that the operator of such a

1 website or proprietary online service will not
2 give, sell, or otherwise transfer addresses main-
3 tained by such site or service to any other party
4 for the purpose of initiating, or enabling others
5 to initiate, commercial electronic mail messages.

6 (2) DISCLAIMER.—Nothing in this subsection
7 creates an ownership or proprietary interest in such
8 electronic mail addresses.

9 (e) PROHIBITION OF DICTIONARY ATTACKS OF COM-
10 Mercial Electronic Mail.—No person may—

11 (1) initiate in or affecting interstate commerce
12 the transmission, to a covered computer, of any com-
13 mercial electronic mail message or any commercial
14 transactional electronic mail message, if the elec-
15 tronic mail address of the recipient was generated
16 messages by use of automated means based on per-
17 mutations of combining names, letters, or numbers
18 for the purpose of sending commercial electronic
19 mail; or

20 (2) assist in initiating, in or affecting interstate
21 commerce, such a message through such generation
22 of electronic mail addresses to which the trans-
23 mission of the message is initiated.

1 (f) REQUIREMENT TO PLACE WARNING LABELS ON
2 COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY
3 ORIENTED MATERIAL.—

4 (1) IN GENERAL.—No person may initiate in or
5 affecting interstate commerce the transmission, to a
6 covered computer, of any commercial electronic mail
7 message that includes sexually oriented material
8 and—

9 (A) fail to include in subject heading for
10 the electronic mail message the marks or no-
11 tices prescribed by the Commission under this
12 subsection; or

13 (B) fail to provide that the matter in the
14 message that is initially viewable to the recipi-
15 ent, when the message is opened by any recipi-
16 ent and absent any further actions by the re-
17 cipient, includes only—

18 (i) to the extent required or author-
19 ized pursuant to paragraph (2), any such
20 marks or notices;

21 (ii) the information required to be in-
22 cluded in the message pursuant to sub-
23 paragraphs (B) and (C) of subsection
24 (a)(1); and

1 (iii) instructions on how to access, or
2 a mechanism to access, the sexually ori-
3 ented material.

4 (2) PRESCRIPTION OF MARKS AND NOTICES.—
5 Not later than 120 days after the date of the enact-
6 ment of this Act, the Commission shall prescribe
7 marks or notices to be included in or associated with
8 commercial electronic mail that contains sexually
9 oriented material, in order to inform the recipient of
10 that fact and to facilitate filtering of such electronic
11 mail.

12 (3) DEFINITION.—In this subsection, the term
13 “sexually oriented material” means any material
14 that depicts sexually explicit conduct (as that term
15 is defined in section 2256 of title 18, United States
16 Code), unless the depiction constitutes a small and
17 insignificant part of the whole, the remainder of
18 which is not primarily devoted to sexual matters.

19 **SEC. 102. PRIVATE RIGHT OF ACTION FOR PROVIDERS OF**
20 **INTERNET ACCESS SERVICE.**

21 (a) AUTHORIZATION.—A provider of Internet access
22 service adversely affected by—

23 (1) a pattern or practice of violations of section
24 101(a), subparagraph (A), (B), or (C) of section

1 101(b)(1), or the regulations prescribed under such
2 section or subparagraph, or

3 (2) a violation of subsection (c), (d), (e), or (f)
4 of section 101 or the regulations prescribed under
5 such subsection,

6 may bring, in an appropriate district court of the United
7 States, either or both of the civil actions under subsection
8 (b).

9 (b) CIVIL ACTIONS.—The civil actions under this
10 subsection are as follows:

11 (1) INJUNCTION.—An action to enjoin the de-
12 fendant from further engaging in such pattern or
13 practice or committing any further violation, as ap-
14 propriate.

15 (2) DAMAGES.—An action to obtain damages in
16 an amount equal to the greater of—

17 (A) the actual damages incurred by the
18 provider of Internet access service as a result of
19 such violation; or

20 (B) the amount determined under sub-
21 section (c).

22 (c) STATUTORY DAMAGES.—

23 (1) VIOLATIONS OF REQUIRED INCLUSION AND
24 OPT-OUT PROVISIONS.—In the case of a violation de-
25 scribed in subsection (a)(1) of this section:

1 (A) DAMAGES PER VIOLATION.—Except as
2 provided in subparagraphs (B), (C), and (D),
3 the amount determined under this subsection is
4 \$10 for each separate electronic mail address to
5 which is initiated, in violation of such sub-
6 section, the transmission of a commercial elec-
7 tronic mail message, over the facilities of the
8 provider of Internet access service.

9 (B) LIMITATION.—Except as provided in
10 subparagraphs (C) and (D), for each commer-
11 cial electronic mail message the transmission of
12 which is unlawfully initiated and that is ad-
13 dressed to multiple electronic mail addresses,
14 the amount determined under subparagraph (A)
15 may not exceed \$500,000.

16 (C) TREBLE DAMAGES FOR INTENTIONAL
17 VIOLATIONS.—If the court finds in an action
18 for such a violation that the defendant com-
19 mitted the violation willfully or knowingly, the
20 court may, in its discretion, increase the
21 amount of the limitation under subparagraph
22 (B) to an amount equal to not more than three
23 times the amount otherwise available under
24 such subparagraph, not to exceed \$1,500,000.

25 (D) REDUCTION.—

1 (i) IN GENERAL.—Subject to clause
2 (ii), the court shall reduce the amount
3 under subparagraph (A) for each violation
4 if the court determines that—

5 (I) the defendant established and
6 implemented, with due care, reason-
7 able practices and procedures in-
8 tended to prevent such violations; and

9 (II) such violations occurred de-
10 spite good faith efforts to maintain
11 compliance with such practices and
12 procedures.

13 (ii) LIMITATION.—If the amount oth-
14 erwise determined under this paragraph
15 exceeds \$75,000, the court may not reduce
16 the amount under subparagraph (A) of
17 this paragraph for each violation such that
18 the amount determined under this para-
19 graph is less than \$75,000.

20 (2) VIOLATIONS OF HEADER INFORMATION,
21 SUBJECT HEADING, HARVESTING, DICTIONARY AT-
22 TACK, AND SEXUALLY ORIENTED MATERIAL PROVI-
23 SIONS.—In the case of a violation described in sub-
24 section (a)(2) of this section, the amount determined
25 under this subsection is \$100 for each separate elec-

1 tronic mail address to which the transmission of an
2 electronic mail message is initiated in violation of
3 such subsection.

4 **SEC. 103. ACTIONS BY STATES.**

5 (a) CIVIL ACTION.—In any case in which the attor-
6 ney general of a State has reason to believe that the inter-
7 ests of the residents of that State have been or are being
8 threatened or adversely affected because any person has
9 engaged or is engaging in—

10 (1) a pattern or practice of initiating trans-
11 missions to residents of that State that violates sub-
12 section (a) or (b) of section 101 or the regulations
13 prescribed under such section, or

14 (2) a violation of subsection (c), (d), (e), or (f)
15 of section 101 or the regulations prescribed under
16 such section,

17 the State, as *parens patriae*, may bring either or both of
18 the civil actions under subsection (b) on behalf of its resi-
19 dents.

20 (b) CIVIL ACTIONS.—The civil actions under this
21 subsection are as follows:

22 (1) INJUNCTION.—An action to enjoin the de-
23 fendant from further engaging in such pattern or
24 practice or committing any further violation, as ap-
25 propriate.

1 (2) DAMAGES.—An action to obtain damages
2 on behalf of residents of the State, in an amount
3 equal to the greater of—

4 (A) the actual damages suffered by such
5 residents; or

6 (B) the amount determined under sub-
7 section (c).

8 (c) STATUTORY DAMAGES.—

9 (1) PER VIOLATION.—Except as provided in
10 paragraph (2), for purposes of subsection (a)(2)(B),
11 the amount determined under this subsection is
12 \$500 for each separate electronic mail address to
13 which the transmission of an electronic mail message
14 is initiated in violation of section 101 or the regula-
15 tions prescribed under such section.

16 (2) TREBLE DAMAGES FOR INTENTIONAL VIO-
17 LATIONS.—In an action under this section, the court
18 may, in its discretion, increase the amount of the
19 award to an amount equal to not more than three
20 times the amount otherwise available under para-
21 graph (1) if the court determines that the defendant
22 willfully or knowingly violated section 101 or the
23 regulations prescribed under such section.

24 (d) EXCLUSIVE JURISDICTION OF FEDERAL
25 COURTS.—The district courts of the United States, the

1 United States courts of any territory, and the District
2 Court of the United States for the District of Columbia
3 shall have exclusive jurisdiction over all civil actions
4 brought under this section. Upon proper application, such
5 courts shall also have jurisdiction to issue writs of man-
6 damus, or orders affording like relief, commanding the de-
7 fendant to comply with the provisions of section 101 or
8 the regulations prescribed under such section, including
9 the requirement that the defendant take such action as
10 is necessary to remove the danger of such violation. Upon
11 a proper showing, a permanent or temporary injunction
12 or restraining order against the defendant shall be granted
13 without bond.

14 (e) RIGHTS OF COMMISSION.—

15 (1) NOTICE OF STATE ACTION AND INTERVEN-
16 TION.—The State shall serve prior written notice of
17 any civil action under this section upon the Commis-
18 sion and provide the Commission with a copy of its
19 complaint, except in any case where such prior no-
20 tice is not feasible, in which case the State shall
21 serve such notice immediately upon instituting such
22 action. Upon receiving a notice regarding a civil ac-
23 tion, the Commission shall have the right to inter-
24 vene in the action and, upon so intervening, to be

1 heard on all matters arising in the action, and to file
2 petitions for appeal.

3 (2) LIMITATION IN CASES OF ACTION BY COM-
4 MISSION.—Whenever a civil action has been insti-
5 tuted by or on behalf of the Commission for a viola-
6 tion of section 101 or the regulations prescribed
7 under such section, no State may, during the pend-
8 ency of such action instituted by or on behalf of the
9 Commission, institute a civil action under this sec-
10 tion against any defendant named in the complaint
11 in such action for any such violation alleged in such
12 complaint.

13 (f) VENUE AND SERVICE OF PROCESS.—Any civil ac-
14 tion brought under this section in a district court of the
15 United States may be brought in the district in which the
16 defendant is found, is an inhabitant, or transacts business
17 or wherever venue is proper under section 1391 of title
18 28, United States Code. Process in such an action may
19 be served in any district in which the defendant is an in-
20 habitant or in which the defendant may be found.

21 (g) INVESTIGATORY POWERS.—For purposes of
22 bringing any civil action under this section, nothing in this
23 Act shall prevent the attorney general of a State from ex-
24 ercising the powers conferred on the attorney general by
25 the laws of such State to conduct investigations or to ad-

1 minister oaths or affirmations or to compel the attendance
2 of witnesses or the production of documentary and other
3 evidence.

4 (h) ACTIONS BY OTHER STATE OFFICIALS.—

5 (1) VIOLATIONS OF STATE LAW.—Nothing in
6 this section shall prohibit an authorized State offi-
7 cial from proceeding in State court on the basis of
8 an alleged violation of any civil or criminal statute
9 of such State.

10 (2) AUTHORIZED STATE OFFICERS.—In addi-
11 tion to actions brought by an attorney general of a
12 State under subsection (a) of this section, such an
13 action may be brought by officers of such State who
14 are authorized by the State to bring actions in such
15 State on behalf of its residents.

16 **SEC. 104. ATTORNEY'S FEES.**

17 In any action brought under section 102 or 103, the
18 court may, in its discretion, require an undertaking for
19 the payment of costs of such action, and assess reasonable
20 costs, including reasonable attorneys' fees, against any
21 party found in the action to have committed a violation
22 on which the action was based.

1 **SEC. 105. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
2 **SION.**

3 The same powers and authorities by which the Fed-
4 eral Trade Commission and the Attorney General enforce
5 compliance, by persons subject to the jurisdiction of the
6 Commission under the Federal Trade Commission Act,
7 with the provisions of such Act and the regulations issued
8 thereunder by the Commission, shall be available to the
9 Commission and the Attorney General to enforce compli-
10 ance, by all persons, with the provisions of section 101
11 of this Act and the regulations issued under such section.
12 For purposes of exercising such powers and authorities to
13 enforce compliance with rules issued under section 101 of
14 this Act, such rules shall be treated as having been issued
15 under section 18 of the Federal Trade Commission Act
16 (notwithstanding issuance in accordance with section
17 301(a) of this Act).

18 **SEC. 106. EXCLUSIVENESS OF REMEDIES.**

19 The remedies of this title are the exclusive civil rem-
20 edies for violations of section 101.

1 **TITLE II—AMENDMENTS TO**
 2 **TITLE 18, UNITED STATES CODE**

3 **SEC. 201. CRIMINAL PENALTIES AND RELATED PROVI-**
 4 **SIONS.**

5 (a) IN GENERAL.—Part I of title 18, United States
 6 Code, is amended by inserting after chapter 29 the fol-
 7 lowing:

8 **“CHAPTER 30—ELECTRONIC MAIL**

“Sec.

“621. Definitions for chapter.

“622. Falsifying sender’s identity in commercial electronic mail

“623. Failure to place warning labels on commercial electronic mail containing
 sexually oriented material.

“624. Criminal penalties for violation of certain sections.

“625. Illicit harvesting of electronic mail addresses.

“626. Civil enforcement of chapter.

9 **“§ 621. Definitions for chapter**

10 “In this chapter, the following definitions apply:

11 “(1) COMMERCIAL ELECTRONIC MAIL MES-
 12 SAGE.—

13 “(A) IN GENERAL.—The term ‘commercial
 14 electronic mail message’ means any electronic
 15 mail message that contains a commercial adver-
 16 tisement or promotion of a product or service.

17 “(B) REFERENCE TO COMPANY.—The in-
 18 clusion of a reference to a commercial entity in
 19 an electronic mail message does not, by itself,
 20 constitute a commercial advertisement or pro-
 21 motion of a product or service.

1 “(2) ELECTRONIC MAIL MESSAGE.—The term
2 ‘electronic mail message’ means a message as trans-
3 mitted to an electronic mail address.

4 “(3) HEADER INFORMATION.—The term ‘head-
5 er information’ means the source, destination, and
6 routing information attached to an electronic mail
7 message, including the originating domain name and
8 originating electronic mail address.

9 “(4) PROTECTED COMPUTER.—The term ‘pro-
10 tected computer’ means a computer described in sec-
11 tion 1030(e)(2)(B).

12 “(5) STATE.—The term ‘State’ includes the
13 District of Columbia, Puerto Rico, and any other
14 territory or possession of the United States.

15 **“§ 622. Falsifying sender’s identity in commercial**
16 **electronic mail**

17 “(a) IN GENERAL.—Whoever intentionally sends to
18 one or more covered computers, during any 30-day period,
19 10 or more commercial electronic mail messages that the
20 sender knows falsify the sender’s identity shall be pun-
21 ished as provided in section 624.

22 “(b) METHODS OF FALSIFYING IDENTITY.—For the
23 purposes of subsection (a), an identity may be falsified by
24 any means, and the following conduct shall be considered
25 to be a falsification of identity:

1 “(1) By accompanying the message with header
2 information that is false as to the identity of the
3 sender (including header information that uses a
4 third party’s domain name without the third party’s
5 permission) or as to the routing of the message.

6 “(2) By accessing a covered computer or com-
7 puter network without authorization or exceeding
8 authorized access and, by means of such conduct,
9 sending, from or through that computer or network,
10 the message that falsifies the identity of the sender.

11 “(3) Registering, using information that fal-
12 sifies the identity of the registrant, for multiple elec-
13 tronic mail accounts or domain names, and sending
14 the message from those accounts, or from or adver-
15 tising those domain names, but failing to include in
16 a conspicuous form in the message the identity and
17 current contact information of the sender.

18 **“§ 623. Failure to place warning labels on commercial**
19 **electronic mail containing sexually ori-**
20 **ented materials**

21 “(a) IN GENERAL.—Whoever knowingly sends a com-
22 mercial electronic mail message that includes sexually ori-
23 ented material to a covered computer and knowingly—

24 “(1) fails to include in subject heading for the
25 electronic mail message the marks or notices pre-

1 scribed by the Federal Trade Commission under sec-
2 tion 101(f)(2) of the Anti-Spam Act of 2003, or

3 “(2) fails to provide that the matter in that
4 message that is initially viewable to the recipient,
5 when that message is opened by any recipient and
6 absent any further actions by the recipient, includes
7 only—

8 “(A) to the extent required or authorized
9 pursuant to such section 101(f)(2), any such
10 marks or notices,

11 “(B) the information required to be in-
12 cluded in the message pursuant to subpara-
13 graphs (B) and (C) of section 101(a)(1) of the
14 Anti-Spam Act of 2003, and

15 (C) instructions on how to access, or a
16 mechanism to access, the sexually oriented ma-
17 terial,

18 shall be punished as provided in section 624 of this chap-
19 ter.

20 “(b) DEFINITION.—In this section, the term ‘sexually
21 oriented material’ means any material that depicts sexu-
22 ally explicit conduct (as that term is defined in section
23 2256), unless the depiction constitutes a small and insig-
24 nificant part of the whole, the remainder of which is not
25 primarily devoted to sexual matters.

1 **“§ 624. Criminal penalties for violation of certain sec-**
2 **tions**

3 “(a) PUNISHMENT.—The punishment for an offense
4 under section 622 or 623 is—

5 “(1) for an offense—

6 “(A) occurring after the defendant was
7 convicted for another offense under this chap-
8 ter; or

9 “(B) involving 10,000 or more electronic
10 mail messages sent within a 30-day period;

11 a fine under this title or imprisonment for not more
12 than 2 years, or both; and

13 “(2) in any other case, a fine under this title
14 or imprisonment for not more than one year, or
15 both.

16 “(b) FACTORS TO BE CONSIDERED BY SENTENCING
17 COMMISSION.—In establishing sentencing guidelines for
18 offenses to which this section applies, the United States
19 Sentencing Commission shall consider the following fac-
20 tors:

21 “(1) The volume of commercial electronic mail
22 involved in the violation.

23 “(2) The manner in which the violation was
24 perpetrated.

25 “(3) Whether the violation involved a violation
26 of any other Federal law.

1 “(4) The extent of economic gain resulting from
2 the violation.

3 “(5) Any history of prior violations by the viola-
4 tor.

5 “(6) Such other factors as justice may require.

6 **“§ 625. Illicit harvesting of electronic mail addresses**

7 “Whoever knowingly and through the direct or indi-
8 rect use of a covered computer uses an automated means
9 to obtain electronic mail addresses from an Internet
10 website or proprietary online service operated by another
11 person, without the authorization of that person and uses
12 those addresses in another violation of this chapter, shall
13 be fined under this title or imprisoned not more than one
14 year, or both.

15 **“§ 626. Civil enforcement**

16 “(a) CIVIL ACTION BY PROVIDERS.—A provider of
17 Internet access service (as defined in section 231(e) of the
18 Communications Act of 1934 (47 U.S.C. 231(e)(4)) who
19 is adversely affected by a violation of this chapter may,
20 in a civil action, recover any appropriate relief, including
21 actual damages or, at the election of the plaintiff, statu-
22 tory damages of \$500 for each electronic mail message
23 involved in the violation.

24 “(b) ADDITIONAL ENFORCEMENT TOOLS FOR THE
25 DEPARTMENT OF JUSTICE.—

1 “(1) CIVIL PENALTY.—The Attorney General
2 may, in a civil action against any person for a viola-
3 tion of this chapter, recover a civil penalty of not to
4 exceed \$500 for each electronic mail message in-
5 volved in the violation.

6 “(2) INTERVENTION.—The Justice Department
7 may also intervene in any civil action brought under
8 subsection (a) or subsection (d).

9 “(c) REMEDIES UNDER THE FEDERAL TRADE COM-
10 MISSION ACT.—The same powers and authorities by which
11 the Federal Trade Commission and the Attorney General
12 enforce compliance, by persons subject to the jurisdiction
13 of the Commission under the Federal Trade Commission
14 Act, with the provisions of such Act and the regulations
15 issued thereunder by the Commission, shall be available
16 to the Commission and the Attorney General, respectively,
17 for use against all persons who violate this chapter with
18 respect to such violations.

19 “(d) STATE ATTORNEYS GENERAL.—Unless the At-
20 torney General or the Federal Trade Commission has com-
21 menced a criminal prosecution or civil proceedings under
22 subsection (b) or (c) with respect to the same conduct,
23 the chief law enforcement officer of a State may, in a civil
24 action, obtain appropriate relief for a violation of this
25 chapter, including statutory damages of \$500 for each

1 electronic mail message sent to a covered computer in that
2 State involved in that violation.

3 “(e) EXCLUSIVENESS OF REMEDIES.—The civil rem-
4 edies of this section are the exclusive civil remedies for
5 violations of this chapter.

6 “(f) EXCLUSIVE ORIGINAL JURISDICTION IN FED-
7 ERAL COURTS.—The United States district courts shall
8 have exclusive original jurisdiction over any civil action
9 commenced under this section.”.

10 (b) CLERICAL AMENDMENT.—The table of chapters
11 at the beginning of part I of title 18, United States Code,
12 is amended by inserting after the item relating to chapter
13 29 the following new item:

“30. **Electronic mail** **621**”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this title shall take effect 120 days after the date of the
16 enactment of this title.

17 **TITLE III—GENERAL** 18 **PROVISIONS**

19 **SEC. 301. REGULATIONS AND REPORT.**

20 (a) REGULATIONS.—

21 (1) IN GENERAL.—Not later than 12 months
22 after the date of the enactment of this Act, the
23 Commission shall issue any regulations necessary to
24 implement sections 101, 105, and 304. In issuing
25 any such regulations, the Commission shall consult

1 with the Federal Communications Commission. Any
2 such regulations shall be issued in accordance with
3 section 553 of title 5, United States Code.

4 (2) LIMITATION.—Paragraph (1) may not be
5 construed to authorize the Commission to establish
6 a requirement pursuant to section 101(a)(1)(A) to
7 include any specific words, characters, marks, or la-
8 bels in a commercial electronic mail message, or to
9 include the identification required by section
10 101(a)(1)(A) in any particular part of such a mail
11 message (such as the subject line or body).

12 (b) REPORT REGARDING PREVENTING UNSOLICITED
13 COMMERCIAL ELECTRONIC MAIL MESSAGES.—Within
14 240 days after the date of the enactment of this Act, the
15 Commission, after consultation with the Federal Commu-
16 nications Commission, shall submit a report to the Con-
17 gress regarding the need to protect the rights of users of
18 electronic mail to avoid receiving unsolicited commercial
19 electronic mail. The report shall—

20 (1) analyze the effectiveness and efficiency, for
21 preventing unsolicited commercial electronic mail
22 messages, of requiring that each such message in-
23 clude specific words, characters, marks, or labels to
24 identify the message as such a message;

1 (2) compare and evaluate alternative methods
2 and procedures (individually or in combination with
3 each other and the method described in paragraph
4 (1)) for their effectiveness in protecting such rights
5 and in terms of their cost and other advantages and
6 disadvantages, including the extent to which such
7 methods and procedures can facilitate screening and
8 removal of unsolicited commercial electronic mail
9 message;

10 (3) compare and evaluate—

11 (A) alternative methods for persons ag-
12 grieved by receipt of unsolicited commercial
13 electronic mail messages to report such receipt
14 and submit such messages to the Commission;
15 and

16 (B) alternative means of notifying the pub-
17 lic of the availability of such methods;

18 (4) evaluate whether there is a need—

19 (A) for additional Commission authority to
20 further expand or restrict the electronic mail
21 messages which are commercial, for purposes of
22 this Act; or

23 (B) to further expand or restrict the prohi-
24 bitions, limitations, definitions, or exceptions of
25 this Act; and

1 (5) propose legislation to effectuate such spe-
2 cific expansions or restrictions, if a need for any ex-
3 pansions or restrictions is determined pursuant to
4 paragraph (4).

5 **SEC. 302. EFFECT ON OTHER LAWS.**

6 (a) FEDERAL LAW.—

7 (1) OBSCENITY AND EXPLOITATION OF CHIL-
8 DREN.—Nothing in this Act may be construed to im-
9 pair the enforcement of section 223 or 231 of the
10 Communications Act of 1934 (47 U.S.C. 223 or
11 231, respectively), chapter 71 (relating to obscenity)
12 or 110 (relating to sexual exploitation of children) of
13 title 18, United States Code, or any other Federal
14 criminal statute.

15 (2) COMMUNICATIONS ACT OF 1934.—Nothing
16 in this Act may be construed to affect the applica-
17 bility of any provision of title II of the Communica-
18 tions Act of 1934.

19 (b) STATE LAW.—This Act preempts any law of a
20 State, or of a political subdivision of a State, that ex-
21 pressly regulates the form of, required inclusions in, the
22 manner or timing of sending, or the form, manner, or ef-
23 fect of recipient requests regarding receipt of, commercial
24 electronic mail, but such laws preempted shall not include
25 any law regulating falsification in commercial electronic

1 mail of the identity of the sender, of authentication infor-
2 mation relating to the sender, of header or routing infor-
3 mation relating to such mail, or of subject line informa-
4 tion.

5 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
6 INTERNET ACCESS SERVICE.—Nothing in this Act shall
7 be construed to have any effect on the lawfulness or un-
8 lawfulness, under any other provision of law, of the adop-
9 tion, implementation, or enforcement by a provider of
10 Internet access service of a policy of declining to transmit,
11 route, relay, handle, receive, or store certain types of elec-
12 tronic mail messages.

13 **SEC. 303. STUDY OF EFFECTIVENESS AND ENFORCEMENT.**

14 (a) IN GENERAL.—Not later than 24 months after
15 the date of the enactment of this Act, the Commission,
16 after consultation with the Federal Communications Com-
17 mission, shall submit a report to the Congress that pro-
18 vides a detailed analysis of the effectiveness and enforce-
19 ment of the provisions, definitions, and exceptions of this
20 Act and the need (if any) for the Congress to modify such
21 provisions, definitions, and exceptions.

22 (b) REQUIRED ANALYSIS.—The report required by
23 subsection (a) shall include an analysis of the extent to
24 which technological and marketplace developments, includ-
25 ing changes in the nature of the devices through which

1 consumers access their electronic mail messages, may af-
2 fect the practicality and effectiveness of the provisions of
3 this Act.

4 **SEC. 304. DEFINITIONS.**

5 For purposes of this Act:

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

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

10 (B) provides marketing information to, re-
11 ceives marketing information from, or shares
12 marketing information with such entity.

13 (2) **BUSINESS DAY.**—The term “business day”
14 means any day other than a Saturday, Sunday, or
15 legal public holiday.

16 (3) **COMMERCIAL ELECTRONIC MAIL MES-**
17 **SAGE.**—

18 (A) **IN GENERAL.**—Except as provided in
19 subparagraph (B), the term “commercial elec-
20 tronic mail message” means any electronic mail
21 message that contains a commercial advertise-
22 ment or promotion of a product or service, ex-
23 cept that such term does not include any com-
24 mercial transactional electronic mail message.

1 (B) REFERENCE TO COMPANY.—The inclu-
2 sion of a reference to a commercial entity in an
3 electronic mail message does not, by itself, con-
4 stitute a commercial advertisement or pro-
5 motion of a product or service.

6 (4) COMMERCIAL TRANSACTIONAL ELECTRONIC
7 MAIL MESSAGE.—The term “commercial trans-
8 actional electronic mail message” means any elec-
9 tronic mail message the primary purpose of which
10 is—

11 (A) to facilitate, complete, or confirm a
12 specific commercial transaction, made with or
13 without exchange of consideration, between the
14 sender and the recipient that the recipient has
15 previously agreed to enter into with the sender;
16 or

17 (B) to provide—
18 (i) a billing statement or information;
19 (ii) debt collection information;
20 (iii) product recall information;
21 (iv) warranty information;
22 (v) safety or security information;
23 (vi) an actual update or modification
24 to a product or service; or

1 (vii) information requested by the re-
2 cipient,
3 relating to such specific commercial transaction
4 or the product or service involved in the trans-
5 action.

6 (5) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (6) COVERED AFFILIATE.—The term “covered
9 affiliate” means, with respect to a commercial elec-
10 tronic mail message, any affiliate of the sender of
11 such message to which such sender has previously
12 sold, leased, exchanged, or otherwise transferred or
13 released the electronic mail address of the recipient.

14 (7) COVERED COMPUTER.—The term “covered
15 computer” means a computer that is used in or af-
16 fects interstate or foreign commerce or communica-
17 tion, including a computer located outside the
18 United States that is used in a manner that affects
19 interstate or foreign commerce of the United States.

20 (8) DOMAIN NAME.—The term “domain name”
21 means any alphanumeric designation which is reg-
22 istered with or assigned by any domain name reg-
23 istrar, domain name registry, or other domain name
24 registration authority as part of an electronic ad-
25 dress on the Internet.

1 (9) ELECTRONIC MAIL ADDRESS.—

2 (A) IN GENERAL.—The term “electronic
3 mail address” means a destination (commonly
4 expressed as a string of characters) to which
5 electronic mail can be sent or delivered.

6 (B) INCLUSION.—In the case of the Inter-
7 net, such term may include an electronic mail
8 address consisting of a user name or mailbox
9 (commonly referred to as the “local part”) and
10 a reference to an Internet domain (commonly
11 referred to as the “domain part”).

12 (10) ELECTRONIC MAIL MESSAGE.—The term
13 “electronic mail message” means a message as
14 transmitted to an electronic mail address.

15 (11) HEADER INFORMATION.—The term “head-
16 er information” means the source, destination, and
17 routing information attached to an electronic mail
18 message, including the originating domain name and
19 originating electronic mail address.

20 (12) INITIATE.—The term “initiate”, when
21 used with respect to an electronic mail message,
22 means to originate such message or to procure the
23 origination of such message.

24 (13) INITIATOR.—The term “initiator”, when
25 used with respect to an electronic mail message,

1 means the person who initiates such message. Such
2 term does not include a provider of an Internet ac-
3 cess service, or any other person, whose role with re-
4 spect to the message is limited to the transmission,
5 routing, relaying, handling, or storing, through an
6 automatic technical process, of a message originated
7 by others.

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

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

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

23 (17) SENDER.—The term “sender”, when used
24 with respect to an electronic mail message, means—

25 (A) the person—

- 1 (i) who is the initiator of such mes-
2 sage; and
3 (ii) whose product, service, or Internet
4 web site is advertised or promoted by the
5 message;
6 (B) such person's successor in interest; or
7 (C) any entity created by or on behalf of
8 such person with the intent of avoiding the re-
9 quirements or prohibitions in section 101.

10 **SEC. 305. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Titles I and III of this Act, and
12 the amendments made by such titles, shall take effect 120
13 days after the date of the enactment of this Act.

14 (b) EFFECT OF REGULATORY AUTHORITY.—The au-
15 thority in this Act or the amendments made by this Act
16 to issue regulations may not be construed to affect the
17 effectiveness of any provision of this Act or the amend-
18 ments made by this Act under subsection (a) of this sec-
19 tion or section 201(c), except to the extent that a deter-
20 mination of the Commission is specifically required by
21 such provision.

○