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Union Calendar No. 394

106TH CONGRESS
2^D SESSION

H. R. 3113

[Report No. 106-700]

A BILL

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

JUNE 26, 2000

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

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1999

Mrs. WILSON (for herself, Mr. GREEN of Texas, Mr. BAKER, Mr. BARRETT of Wisconsin, Mr. BLUNT, Mr. BOUCHER, Mrs. CUBIN, Mr. DEAL of Georgia, Mr. EHRLICH, Mr. ENGLISH, Mr. GILLMOR, Mr. GORDON, Mr. GREENWOOD, Mr. HASTINGS of Washington, Mr. KLINK, Mr. LUTHER, Ms. MCCARTHY of Missouri, Mr. MCINTOSH, Mr. OXLEY, Mr. ROGAN, Mr. SANDLIN, Mr. SAWYER, Mr. SHIMKUS, Mr. STEARNS, Mr. STRICKLAND, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Commerce

JUNE 26, 2000

Additional sponsors: Mr. UDALL of New Mexico, Mr. WYNN, Mr. BARTON of Texas, Mr. BILBRAY, Mr. TAUZIN, Mr. LARGENT, Mr. PICKERING, Mr. GARY MILLER of California, Mr. HOLT, Mr. PITTS, Mr. SESSIONS, Mr. ADERHOLT, Mr. GOODLATTE, Mr. WELLER, Mr. MOORE, Mr. FRELINGHUYSEN, Mr. WOLF, Mr. GELDENSEN, Mr. KILDEE, Mr. FROST, Ms. CARSON, Mr. BURR of North Carolina, Mr. BRYANT, Mr. CRAMER, and Mr. SCHAFFER

JUNE 26, 2000

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

[Strike out all after the enacting clause and insert the part printed in italic]
[For text of introduced bill, see copy of bill as introduced on October 20, 1999]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Unsolicited Commercial*
5 *Electronic Mail Act of 2000”.*

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

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

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

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

1 *from having a reasonably predictable, efficient, and*
2 *economical online experience.*

3 (3) *Unsolicited commercial electronic mail can*
4 *be an important mechanism through which businesses*
5 *advertise and attract customers in the online environ-*
6 *ment.*

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

12 (5) *Unsolicited commercial electronic mail may*
13 *impose significant monetary costs on Internet access*
14 *services, businesses, and educational and nonprofit*
15 *institutions that carry and receive such mail, as there*
16 *is a finite volume of mail that such providers, busi-*
17 *nesses, and institutions can handle without further*
18 *investment. The sending of such mail is increasingly*
19 *and negatively affecting the quality of service pro-*
20 *vided to customers of Internet access service, and*
21 *shifting costs from the sender of the advertisement to*
22 *the Internet access service.*

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

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

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

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

16 (9) Because recipients of unsolicited commercial
17 electronic mail are unable to avoid the receipt of such
18 mail through reasonable means, such mail may in-
19 vade the privacy of recipients.

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

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

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

6 (2) *Internet service providers should not be com-*
7 *pelled to bear the costs of unsolicited commercial elec-*
8 *tronic mail without compensation from the sender;*
9 *and*

10 (3) *recipients of unsolicited commercial elec-*
11 *tronic mail have a right to decline to receive or have*
12 *their children receive unsolicited commercial elec-*
13 *tronic mail.*

14 **SEC. 3. DEFINITIONS.**

15 *In this Act:*

16 (1) *CHILDREN.—The term “children” includes*
17 *natural children, stepchildren, adopted children, and*
18 *children who are wards of or in custody of the parent,*
19 *who have not attained the age of 18 and who reside*
20 *with the parent or are under his or her care, custody,*
21 *or supervision.*

22 (2) *COMMERCIAL ELECTRONIC MAIL MESSAGE.—*
23 *The term “commercial electronic mail message”*
24 *means any electronic mail message that primarily*
25 *advertises or promotes the commercial availability of*

1 *a product or service for profit or invites the recipient*
2 *to view content on an Internet web site that is oper-*
3 *ated for a commercial purpose. An electronic mail*
4 *message shall not be considered to be a commercial*
5 *electronic mail message solely because such message*
6 *includes a reference to a commercial entity that serves*
7 *to identify the initiator.*

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

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

16 (5) *ELECTRONIC MAIL ADDRESS.*—

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

21 (B) *INCLUSION.*—*In the case of the Internet,*
22 *the term “electronic mail address” may include*
23 *an electronic mail address consisting of a user*
24 *name or mailbox (commonly referred to as the*
25 *“local part”) and a reference to an Internet do-*

1 *main (commonly referred to as the “domain*
2 *part”).*

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

6 (7) *INTERNET ACCESS SERVICE.*—*The term*
7 *“Internet access service” has the meaning given that*
8 *term in section 231(e)(4) of the Communications Act*
9 *of 1934 (47 U.S.C. 231(e)(4)).*

10 (8) *INITIATE.*—*The term “initiate”, when used*
11 *with respect to a commercial electronic mail message,*
12 *means to originate such message or to procure the*
13 *transmission of such message.*

14 (9) *INITIATOR.*—*The term “initiator”, when used*
15 *with respect to a commercial electronic mail message,*
16 *means the person who initiates such message. Such*
17 *term does not include a provider of an Internet access*
18 *service whose role is limited to handling, transmit-*
19 *ting, or retransmitting the message.*

20 (10) *PRE-EXISTING BUSINESS RELATIONSHIP.*—
21 *The term “pre-existing business relationship” means,*
22 *when used with respect to the initiator and recipient*
23 *of a commercial electronic mail message, that either*
24 *of the following circumstances exist:*

25 (A) *PREVIOUS BUSINESS TRANSACTION.*—

1 (i) *Within the 5-year period ending*
2 *upon receipt of such message, there has been*
3 *a business transaction between the initiator*
4 *and the recipient (including a transaction*
5 *involving the provision, free of charge, of in-*
6 *formation requested by the recipient, of*
7 *goods, or of services); and*

8 (ii) *the recipient was, at the time of*
9 *such transaction or thereafter, provided a*
10 *clear and conspicuous notice of an oppor-*
11 *tunity not to receive further messages from*
12 *the initiator and has not exercised such op-*
13 *portunity.*

14 (B) *OPT IN.*—*The recipient has given the*
15 *initiator permission to initiate commercial elec-*
16 *tronic mail messages to the electronic mail ad-*
17 *dress of the recipient and has not subsequently*
18 *revoked such permission.*

19 (11) *RECIPIENT.*—*The term “recipient”, when*
20 *used with respect to a commercial electronic mail*
21 *message, means the addressee of such message.*

22 (12) *UNSOLICITED COMMERCIAL ELECTRONIC*
23 *MAIL MESSAGE.*—*The term “unsolicited commercial*
24 *electronic mail message” means any commercial elec-*
25 *tronic mail message that is sent by the initiator to*

1 *quent messages are unsolicited commercial electronic*
2 *mail messages.*

3 (3) *ACCURATE ROUTING INFORMATION.—It shall*
4 *be unlawful for any person who initiates the trans-*
5 *mission of any unsolicited commercial electronic mail*
6 *message to any person within the United States to*
7 *take any action that causes any Internet routing in-*
8 *formation contained in or accompanying such*
9 *message—*

10 (A) *to be inaccurate;*

11 (B) *to be invalid according to the pre-*
12 *vailing standards for Internet protocols; or*

13 (C) *to fail to accurately reflect the routing*
14 *of such message.*

15 (4) *INCLUSION OF IDENTIFIER AND OPT-OUT.—It*
16 *shall be unlawful for any person to initiate the trans-*
17 *mission of any unsolicited commercial electronic mail*
18 *message to any person within the United States un-*
19 *less the message provides, in a manner that is clear*
20 *and conspicuous to the recipient—*

21 (A) *identification that the message is an*
22 *unsolicited commercial electronic mail message;*
23 *and*

24 (B) *notice of the opportunity under para-*
25 *graph (2) not to receive further unsolicited com-*

1 *mercial electronic mail messages from the*
2 *initiator.*

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

5 **(1) AUTHORITY TO ESTABLISH POLICIES.—***A*
6 *provider of Internet access service may enforce a pol-*
7 *icy regarding unsolicited commercial electronic mail*
8 *messages, but only if such policy complies with the re-*
9 *quirements of paragraph (3).*

10 **(2) PROHIBITION OF TRANSMISSIONS IN VIOLA-**
11 **TION OF POSTED POLICY.—***It shall be unlawful for*
12 *any person to initiate the transmission of an unsolic-*
13 *ited commercial electronic mail message to any per-*
14 *son within the United States in violation of a policy*
15 *governing the use of the equipment of a provider of*
16 *Internet access service for transmission of unsolicited*
17 *commercial electronic mail messages that meets the*
18 *requirements of paragraph (3).*

19 **(3) REQUIREMENTS FOR ENFORCEABILITY.—***The*
20 *requirements under this paragraph for a policy re-*
21 *garding unsolicited commercial electronic mail mes-*
22 *sages are as follows:*

23 **(A) CLARITY.—***The policy shall explicitly*
24 *provide that compliance with a rule or set of*
25 *rules is a condition of use of the equipment of a*

1 *provider of Internet access service to deliver com-*
2 *mercial electronic mail messages.*

3 (B) *PUBLIC AVAILABILITY.*—*The policy*
4 *shall be publicly available by at least one of the*
5 *following methods:*

6 (i) *WEB POSTING.*—*The policy is clear-*
7 *ly and conspicuously posted on a World*
8 *Wide Web site of the provider of Internet*
9 *access service, which has an Internet do-*
10 *main name that is identical to the Internet*
11 *domain name of the electronic mail address*
12 *to which the rule or set of rules applies.*

13 (ii) *NOTIFICATION IN COMPLIANCE*
14 *WITH TECHNOLOGICAL STANDARD.*—*Such*
15 *policy is made publicly available by the*
16 *provider of Internet access service in accord-*
17 *ance with a technological standard adopted*
18 *by an appropriate Internet standards set-*
19 *ting body (such as the Internet Engineering*
20 *Task Force) and recognized by the Commis-*
21 *sion by rule as a fair standard.*

22 (C) *INTERNAL OPT-OUT LIST.*—*If the policy*
23 *of a provider of Internet access service requires*
24 *compensation specifically for the transmission of*
25 *unsolicited commercial electronic mail messages*

1 *into its system, the provider shall provide an op-*
2 *tion to its subscribers not to receive any unsolic-*
3 *ited commercial electronic mail messages, except*
4 *that such option is not required for any sub-*
5 *scriber who has agreed to receive unsolicited*
6 *commercial electronic mail messages in exchange*
7 *for discounted or free Internet access service.*

8 (4) *OTHER ENFORCEMENT.*—*Nothing in this Act*
9 *shall be construed to prevent or limit, in any way, a*
10 *provider of Internet access service from enforcing,*
11 *pursuant to any remedy available under any other*
12 *provision of Federal, State, or local criminal or civil*
13 *law, a policy regarding unsolicited commercial elec-*
14 *tronic mail messages that complies with the require-*
15 *ments of paragraph (3).*

16 (c) *PROTECTION OF INTERNET ACCESS SERVICE PRO-*
17 *VIDERS.*—

18 (1) *GOOD FAITH EFFORTS TO BLOCK TRANS-*
19 *MISSIONS.*—*A provider of Internet access service shall*
20 *not be liable, under any Federal, State, or local civil*
21 *or criminal law, for any action it takes in good faith*
22 *to block the transmission or receipt of unsolicited*
23 *commercial electronic mail messages.*

24 (2) *INNOCENT RETRANSMISSION.*—*A provider of*
25 *Internet access service the facilities of which are used*

1 *only as an intermediary, retransmitter, or relay for*
2 *unsolicited bulk commercial electronic mail messages*
3 *transmitted in violation of subsection (a) shall not be*
4 *liable for any harm resulting from the transmission*
5 *or receipt of such electronic mail unless it permits the*
6 *transmission or retransmission of such electronic mail*
7 *with actual knowledge that the transmission is pro-*
8 *hibited by subsection (a) or subsection (b)(2).*

9 **SEC. 5. ENFORCEMENT.**

10 (a) *GOVERNMENTAL ORDER.*—

11 (1) *NOTIFICATION OF ALLEGED VIOLATION.*—*The*
12 *Commission shall send a notification of alleged viola-*
13 *tion to any person who violates section 4 if—*

14 (A) *a recipient or a provider of Internet ac-*
15 *cess service notifies the Commission, in such*
16 *form and manner as the Commission shall deter-*
17 *mine, that a transmission has been received in*
18 *violation of section 4; or*

19 (B) *the Commission has other reason to be-*
20 *lieve that such person has violated or is violating*
21 *section 4.*

22 (2) *TERMS OF NOTIFICATION.*—*A notification of*
23 *alleged violation shall—*

24 (A) *identify the violation for which the no-*
25 *tification was issued;*

1 (B) direct the initiator to refrain from fur-
2 ther violations of section 4;

3 (C) expressly prohibit the initiator (and the
4 agents or assigns of the initiator) from further
5 initiating unsolicited commercial electronic mail
6 messages in violation of section 4 to the des-
7 ignated recipients or providers of Internet access
8 service, effective on the 3rd day (excluding Sat-
9 urdays, Sundays, and legal public holidays)
10 after receipt of the notification; and

11 (D) direct the initiator (and the agents or
12 assigns of the initiator) to delete immediately the
13 names and electronic mail addresses of the des-
14 ignated recipients or providers from all mailing
15 lists owned or controlled by the initiator (or such
16 agents or assigns) and prohibit the initiator
17 (and such agents or assigns) from the sale, lease,
18 exchange, license, or other transaction involving
19 mailing lists bearing the names and electronic
20 mail addresses of the designated recipients or
21 providers.

22 (3) *COVERAGE OF MINOR CHILDREN BY NOTIFI-*
23 *CATION.*—Upon request of a recipient of an electronic
24 mail message transmitted in violation of section 4,
25 the Commission shall include in the notification of al-

1 *leged violation the names and electronic mail addresses*
2 *of any child of the recipient.*

3 (4) *ENFORCEMENT OF NOTIFICATION TERMS.—*

4 (A) *COMPLAINT.—If the Commission believes*
5 *that the initiator (or the agents or assigns*
6 *of the initiator) has failed to comply with the*
7 *terms of a notification issued under this sub-*
8 *section, the Commission shall serve upon the*
9 *initiator (or such agents or assigns), by reg-*
10 *istered or certified mail, a complaint stating the*
11 *reasons for its belief and request that any re-*
12 *sponse thereto be filed in writing with the Com-*
13 *mission within 15 days after the date of such*
14 *service.*

15 (B) *HEARING AND ORDER.—If the Commis-*
16 *sion, after an opportunity for a hearing on the*
17 *record, determines that the person upon whom*
18 *the complaint was served violated the terms of*
19 *the notification, the Commission shall issue an*
20 *order directing that person to comply with the*
21 *terms of the notification.*

22 (C) *PRESUMPTION.—For purposes of a de-*
23 *termination under subparagraph (B), receipt of*
24 *any transmission in violation of a notification*
25 *of alleged violation 30 days (excluding Satur-*

1 *days, Sundays, and legal public holidays) or*
2 *more after the effective date of the notification*
3 *shall create a rebuttable presumption that such*
4 *transmission was sent after such effective date.*

5 (5) *ENFORCEMENT BY COURT ORDER.*—*Any dis-*
6 *trict court of the United States within the jurisdiction*
7 *of which any transmission is sent or received in vio-*
8 *lation of a notification given under this subsection*
9 *shall have jurisdiction, upon application by the At-*
10 *torney General, to issue an order commanding com-*
11 *pliance with such notification. Failure to observe such*
12 *order may be punishable by the court as contempt*
13 *thereof.*

14 (b) *PRIVATE RIGHT OF ACTION.*—

15 (1) *ACTIONS AUTHORIZED.*—*A recipient or a*
16 *provider of Internet access service may, if otherwise*
17 *permitted by the laws or rules of court of a State,*
18 *bring in an appropriate court of that State, or may*
19 *bring in an appropriate Federal court if such laws or*
20 *rules do not so permit, either or both of the following*
21 *actions:*

22 (A) *An action based on a violation of sec-*
23 *tion 4 to enjoin such violation.*

1 (B) *An action to recover for actual monetary*
2 *loss from such a violation in an amount*
3 *equal to the greatest of—*

4 (i) *the amount of such actual monetary*
5 *loss; or*

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

8 (2) *ADDITIONAL REMEDIES.—If the court finds*
9 *that the defendant willfully, knowingly, or repeatedly*
10 *violated section 4, the court may, in its discretion, in-*
11 *crease the amount of the award to an amount equal*
12 *to not more than three times the amount available*
13 *under paragraph (1).*

14 (3) *ATTORNEY FEES.—In any such action, the*
15 *court may, in its discretion, require an undertaking*
16 *for the payment of the costs of such action, and assess*
17 *reasonable costs, including reasonable attorneys' fees,*
18 *against any party.*

19 (4) *PROTECTION OF TRADE SECRETS.—At the re-*
20 *quest of any party to an action brought pursuant to*
21 *this subsection or any other participant in such an*
22 *action, the court may, in its discretion, issue protec-*
23 *tive orders and conduct legal proceedings in such a*
24 *way as to protect the secrecy and security of the com-*
25 *puter, computer network, computer data, computer*

1 *program, and computer software involved in order to*
2 *prevent possible recurrence of the same or a similar*
3 *act by another person and to protect any trade secrets*
4 *of any such party or participant.*

5 **SEC. 6. EFFECT ON OTHER LAWS.**

6 (a) *NO EFFECT ON CRIMINAL LAW.*—*Nothing in this*
7 *Act shall be construed to impair the enforcement of section*
8 *223 or 231 of the Communications Act of 1934, chapter 71*
9 *(relating to obscenity) or 110 (relating to sexual exploi-*
10 *tation of children) of title 18, United States Code, or any*
11 *other Federal criminal statute.*

12 (b) *STATE LAW.*—*No State or local government may*
13 *impose any civil liability for commercial activities or ac-*
14 *tions in interstate or foreign commerce in connection with*
15 *an activity or action described in section 4 of this Act that*
16 *is inconsistent with the treatment of such activities or ac-*
17 *tions under this Act, except that this Act shall not preempt*
18 *any civil remedy under State trespass or contract law or*
19 *under any provision of Federal, State, or local criminal law*
20 *or any civil remedy available under such law that relates*
21 *to acts of computer fraud or abuse arising from the unau-*
22 *thorized transmission of unsolicited commercial electronic*
23 *mail messages.*

1 **SEC. 7. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
2 **ELECTRONIC MAIL.**

3 *Not later than 18 months after the date of enactment*
4 *of this Act, the Federal Trade Commission shall submit a*
5 *report to the Congress that provides a detailed analysis of*
6 *the effectiveness and enforcement of the provisions of this*
7 *Act and the need (if any) for the Congress to modify such*
8 *provisions.*

9 **SEC. 8 SEPARABILITY.**

10 *If any provision of this Act or the application thereof*
11 *to any person or circumstance is held invalid, the remain-*
12 *der of this Act and the application of such provision to*
13 *other persons or circumstances shall not be affected.*

14 **SEC. 9. EFFECTIVE DATE.**

15 *The provisions of this Act shall take effect 90 days after*
16 *the date of enactment of this Act.*

DOCUMENT NO. 34

