

**SUBSTITUTE FOR
HOUSE BILL NO. 4519**

A bill to require certain notices regarding the transmission of unsolicited commercial e-mail; to establish procedures for e-mail service providers; to allow recipients of e-mail to be excluded from receiving future unsolicited commercial e-mail; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "unsolicited commercial e-mail protection act".

3 Sec. 2. As used in this act:

4 (a) "Commercial e-mail" means an electronic message, file,
5 data, or other information promoting the sale, lease, or exchange
6 of goods, services, real property, or any other thing of value
7 that is transmitted between 2 or more computers, computer
8 networks, or electronic terminals or within a computer network.

9 (b) "Computer network" means 2 or more computers that are,

1 directly or indirectly, interconnected to exchange electronic
2 messages, files, data, or other information.

3 (c) "E-mail address" means a destination, commonly expressed
4 as a string of characters, to which e-mail may be sent or
5 delivered.

6 (d) "E-mail service provider" means a person that is an
7 intermediary in the transmission of e-mail or provides to end
8 users of e-mail service the ability to send and receive e-mail.

9 (e) "Internet domain name" means a globally unique,
10 hierarchical reference to an internet host or service, assigned
11 through centralized internet authorities, comprising a series of
12 character strings separated by periods, with the right-most
13 string specifying the top of the hierarchy.

14 (f) "Person" means an individual, corporation, partnership,
15 association, governmental entity, or any other legal entity.

16 (g) "Preexisting business relationship" means a relationship
17 existing before the receipt of an e-mail formed voluntarily by
18 the recipient with another person by means of an inquiry,
19 application, purchase, or use of a product or service of the
20 person sending the e-mail.

21 (h) "Unsolicited" means without the recipient's express
22 permission. An e-mail is not unsolicited if the sender has a
23 preexisting business or personal relationship with the
24 recipient. An e-mail is not unsolicited if it was received as a
25 result of the recipient opting into a system in order to receive
26 promotional material.

27 Sec. 3. A person who intentionally sends or causes to be

1 sent an unsolicited commercial e-mail through an e-mail service
2 provider that the sender knew or should have known is located in
3 this state or to an e-mail address that the sender knew or should
4 have known is held by a resident of this state shall do all of
5 the following:

6 (a) Include in the e-mail subject line "ADV:" as the first 4
7 characters.

8 (b) Conspicuously state in the e-mail all of the following:

9 (i) The sender's legal name.

10 (ii) The sender's correct street address.

11 (iii) The sender's valid internet domain name.

12 (iv) The sender's valid return e-mail address.

13 (c) Establish a toll-free telephone number, a valid
14 sender-operated return e-mail address, or another easy-to-use
15 electronic method that the recipient of the commercial e-mail
16 message may call or access by e-mail or other electronic means to
17 notify the sender not to transmit by e-mail any further
18 unsolicited commercial e-mail messages. The notification process
19 may include the ability for the commercial e-mail messages
20 recipient to direct the sender to transmit or not transmit
21 particular commercial e-mail messages based upon products,
22 services, divisions, organizations, companies, or other
23 selections of the recipient's choice. An unsolicited commercial
24 e-mail message shall include, in print as large as the print used
25 for the majority of the e-mail message, a statement informing the
26 recipient of a toll-free telephone number that the recipient may
27 call, or a valid return address to which the recipient may write

1 or access by e-mail, notifying the sender not to transmit to the
2 recipient any further commercial e-mail messages.

3 (d) Conspicuously provide in the text of the commercial
4 e-mail, in print as large as the print used for the majority of
5 the e-mail, a notice that informs the recipient that the
6 recipient may conveniently and at no cost be excluded from future
7 commercial e-mail from the sender as provided under subdivision
8 (c).

9 Sec. 4. (1) A person who sends or causes to be sent an
10 unsolicited commercial e-mail through an e-mail service provider
11 located in this state or to an e-mail address held by a resident
12 of this state shall not do any of the following:

13 (a) Use a third party's internet domain name or third party
14 e-mail address in identifying the point of origin or in stating
15 the transmission path of the commercial e-mail without the third
16 party's consent.

17 (b) Misrepresent any information in identifying the point of
18 origin or the transmission path of the commercial e-mail.

19 (c) Fail to include in the commercial e-mail the information
20 necessary to identify the point of origin of the commercial
21 e-mail.

22 (d) Provide directly or indirectly to another person the
23 software described under section 5.

24 (2) If the recipient of an unsolicited commercial e-mail
25 notifies the sender that the recipient does not want to receive
26 future unsolicited commercial e-mail from the sender, the sender
27 shall not send that recipient unsolicited commercial e-mail

1 either directly or indirectly through a third party.

2 (3) A sender of unsolicited commercial e-mail shall establish
3 and maintain the necessary policies and records to ensure that
4 the recipient who has notified the sender under subsection (2)
5 does not receive any e-mail from the date of the notice. The
6 sender shall update its records under this subsection not less
7 than every 14 business days.

8 Sec. 5. A person shall not knowingly sell, give, or
9 otherwise distribute or possess with the intent to sell, give, or
10 distribute software that does any of the following:

11 (a) Is primarily designed or produced for the purpose of
12 facilitating or enabling the falsification of commercial e-mail
13 transmission information or other routing information.

14 (b) Has only limited commercially significant purpose or use
15 other than to facilitate or enable the falsification of
16 commercial e-mail transmission information or other routing
17 information.

18 (c) Is marketed by that person or another acting in concert
19 with that person with that person's knowledge for use in
20 facilitating or enabling the falsification of commercial e-mail
21 transmission information or other routing information.

22 Sec. 6. An e-mail service provider may design its software
23 so that a sender of unsolicited commercial e-mail is given notice
24 of the requirements of this act each time the sender requests
25 delivery of e-mail. The existence of such software shall
26 constitute actual notice to the sender of the requirements of
27 this act.

1 Sec. 7. (1) Except as otherwise provided under subsection
2 (2), a person who violates this act is guilty of a misdemeanor
3 punishable by imprisonment for not more than 1 year or a fine of
4 not more than \$10,000.00, or both.

5 (2) A person who violates section 4 or violates this act in
6 the furtherance of another crime is guilty of a felony punishable
7 by imprisonment for not more than 4 years or a fine of not more
8 than \$25,000.00, or both.

9 (3) Each commercial e-mail sent in violation of this act is a
10 separate violation under this section.

11 (4) An e-mail service provider does not violate this act as a
12 result of either of the following:

13 (a) Being an intermediary between the sender and recipient in
14 the transmission of an unsolicited commercial e-mail that
15 violates this act.

16 (b) Provides transmission of unsolicited commercial e-mail
17 over the provider's network or facilities.

18 (5) It is prima facie evidence that the sender is in
19 violation of this section if the recipient is unable to contact
20 the sender through the return e-mail address provided by the
21 sender under section 3.

22 (6) It is a defense to a case brought under this section or
23 an action under section 8 that the unsolicited commercial e-mail
24 was transmitted accidentally or as a result of a preexisting
25 business relationship. The burden of proving that the commercial
26 e-mail was transmitted accidentally or as a result of a
27 preexisting business relationship is on the sender.

1 Sec. 8. (1) A civil action may be brought by a person who
2 received an unsolicited commercial e-mail in violation of this
3 act.

4 (2) A civil action may be brought by an e-mail service
5 provider through whose facilities the unsolicited commercial
6 e-mail was transmitted in violation of this act.

7 (3) A civil action may be brought by the attorney general
8 against a person who has violated this act.

9 (4) In each action brought under this section, a recipient,
10 e-mail service provider, or attorney general may recover 1 of the
11 following:

12 (a) Actual damages.

13 (b) In lieu of actual damages, recover the lesser of the
14 following:

15 (i) \$10.00 per unsolicited commercial e-mail received by the
16 recipient or transmitted through the e-mail service provider.

17 (ii) \$25,000.00 for each day that the violation occurs.

18 (5) The prevailing recipient or e-mail service provider shall
19 be awarded actual costs and reasonable attorney fees.

20 Enacting section 1. This act takes effect September 1,
21 2003.