

# HOUSE BILL No. 4519

April 2, 2003, Introduced by Reps. Huizenga, Bradstreet, Rivet, McConico, Taub, Casperson, DeRoche, Bisbee, Nitz, LaJoy, Pastor, LaSata, Middaugh, Voorhees, Julian, Stahl, Garfield, Woodward, Stallworth, Murphy, Ehardt, Shackleton, Kooiman, Vander Veen, Hopgood and Daniels and referred to the Committee on Energy and Technology.

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, or real property that is transmitted between  
7 2 or more computers, computer networks, or electronic terminals  
8 or within a computer network.

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

1 interconnected to exchange electronic messages, files, data, or  
2 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 from the sender to the  
8 recipient or provides to end users of e-mail service the ability  
9 to send and receive e-mail.

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

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

17 (g) "Unsolicited" means without the recipient's express  
18 permission. An e-mail is not unsolicited if the sender has a  
19 preexisting business or personal relationship with the  
20 recipient.

21 Sec. 3. (1) A person who sends or causes to be sent an  
22 unsolicited commercial e-mail through the intermediary of an  
23 e-mail service provider located in this state or to an e-mail  
24 address held by a resident of this state shall do all of the  
25 following:

26 (a) Conspicuously state in the e-mail all of the following:

27 (i) The sender's legal name.

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

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

3 (b) Include in the e-mail subject line "ADV:" as the first 4  
4 characters.

5 (c) Establish a toll-free telephone number, a valid  
6 sender-operated return e-mail address, or another easy-to-use  
7 electronic method that the recipient of the commercial e-mail  
8 message may call or access by e-mail or other electronic means to  
9 notify the sender not to transmit by e-mail any further  
10 unsolicited commercial e-mail messages. The notification process  
11 may include the ability for the commercial e-mail messages  
12 recipient to direct the sender to transmit or not transmit  
13 particular commercial e-mail messages based upon products,  
14 services, divisions, organizations, companies, or other  
15 selections of the recipient's choice. A commercial e-mail  
16 message must include a statement informing the recipient of a  
17 toll-free telephone number that the recipient may call, or a  
18 valid return address to which the recipient may write or access  
19 by e-mail or another electronic method established by the sender,  
20 notifying the sender not to transmit to the recipient any further  
21 unsolicited commercial e-mail messages to the e-mail address or  
22 addresses specified by the recipient and explaining the manner in  
23 which the recipient may specify what commercial e-mail messages  
24 the recipient does and does not wish to receive.

25 (d) Conspicuously provide in the text of the commercial  
26 e-mail a notice that informs the recipient that the recipient may  
27 conveniently and at no cost be excluded from future unsolicited

1 commercial e-mail from the sender as provided under subdivision  
2 (c).

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

8       (a) Use a third party's internet domain name in identifying  
9 the point of origin or in stating the transmission path of the  
10 commercial e-mail without the third party's consent.

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

13       (c) Fail to include in the commercial e-mail the information  
14 necessary to identify the point of origin of the commercial  
15 e-mail.

16       (d) Provide directly or indirectly to another person the  
17 software that facilitates or enables the falsification of  
18 commercial e-mail transmission or routing information.

19       (2) If the recipient of an unsolicited commercial e-mail  
20 notifies the sender that the recipient does not want to receive  
21 future unsolicited commercial e-mail from the sender, the sender  
22 shall not send that recipient unsolicited commercial e-mail  
23 either directly or through a subsidiary or affiliate.

24       (3) A sender of unsolicited commercial e-mail shall  
25 establish and maintain the necessary policies and records to  
26 identify any person who has notified the sender under subsection  
27 (2). The sender shall update its records under this subsection

1 no less than every 2 business days.

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

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

8       (b) Has only limited commercially significant purpose or use  
9 other than to facilitate or enable the falsification of  
10 commercial e-mail transmission information or other routing  
11 information.

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

16       Sec. 6. An e-mail service provider may, upon its own  
17 initiative, block the receipt or transmission through its service  
18 of any unsolicited commercial e-mail advertisement that it  
19 reasonably believes is, or will be, sent in violation of this  
20 act.

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

25       (2) A person who violates section 4 or violates this act in  
26 the furtherance of another crime is guilty of a felony punishable  
27 by imprisonment for not more than 4 years or a fine of not more

1 than \$25,000.00, or both.

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

4 (4) An e-mail service provider does not violate this act  
5 solely by being an intermediary between the sender and recipient  
6 in the transmission of an unsolicited commercial e-mail that  
7 violates this act.

8 (5) It is a defense to an action brought under this section  
9 or section 5 that the unsolicited commercial e-mail was  
10 transmitted accidentally. The burden of proving that the  
11 commercial e-mail was transmitted accidentally is on the sender.

12 Sec. 8. (1) An action may be brought by a person who  
13 received an unsolicited commercial e-mail in violation of this  
14 act.

15 (2) An action may be brought by an e-mail service provider  
16 through whose facilities the unsolicited commercial e-mail was  
17 transmitted in violation of this act.

18 (3) In each action brought under this section, a recipient or  
19 e-mail service provider may recover 1 of the following:

20 (a) Actual damages.

21 (b) In lieu of actual damages, recover the lesser of the  
22 following:

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

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

26 (4) The prevailing recipient or e-mail service provider shall  
27 be awarded actual costs and reasonable attorney fees.