

Act No. 42
Public Acts of 2003
Approved by the Governor
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 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

ENROLLED HOUSE BILL No. 4519

AN ACT 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:

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

Sec. 2. As used in this act:

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

(b) “Computer network” means 2 or more computers that are, directly or indirectly, interconnected to exchange electronic messages, files, data, or other information.

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

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

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

(f) “Person” means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

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

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

Sec. 3. A person who intentionally sends or causes to be sent an unsolicited commercial e-mail through an e-mail service provider that the sender knew or should have known is located in this state or to an e-mail address that the sender knew or should have known is held by a resident of this state shall do all of the following:

- (a) Include in the e-mail subject line "ADV:" as the first 4 characters.
- (b) Conspicuously state in the e-mail all of the following:
 - (i) The sender's legal name.
 - (ii) The sender's correct street address.
 - (iii) The sender's valid internet domain name.
 - (iv) The sender's valid return e-mail address.

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

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

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

- (a) Use a third party's internet domain name or third party e-mail address in identifying the point of origin or in stating the transmission path of the commercial e-mail without the third party's consent.
 - (b) Misrepresent any information in identifying the point of origin or the transmission path of the commercial e-mail.
 - (c) Fail to include in the commercial e-mail the information necessary to identify the point of origin of the commercial e-mail.
 - (d) Provide directly or indirectly to another person the software described under section 5.
- (2) If the recipient of an unsolicited commercial e-mail notifies the sender that the recipient does not want to receive future unsolicited commercial e-mail from the sender, the sender shall not send that recipient unsolicited commercial e-mail either directly or indirectly through a third party.

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

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

- (a) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of commercial e-mail transmission information or other routing information.
- (b) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of commercial e-mail transmission information or other routing information.
- (c) Is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of commercial e-mail transmission information or other routing information.

Sec. 6. (1) An e-mail service provider may design its software so that a sender of unsolicited commercial e-mail is given notice of the requirements of this act each time the sender requests delivery of e-mail. The existence of such software shall constitute actual notice to the sender of the requirements of this act.

(2) An e-mail service provider that designs and implements a dispute resolution process for a sender who believes the sender's e-mail message has been improperly blocked, and makes contact information accessible on its website, is not liable under this act for blocking the receipt or transmission of the e-mail.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Actual damages.

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

(i) \$500.00 per unsolicited commercial e-mail received by the recipient or transmitted through the e-mail service provider.

(ii) \$250,000.00 for each day that the violation occurs.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor