
By: **Delegates Smigiel, Boteler, Cluster, Costa, Dwyer, Kach, McComas,
Myers, Nathan-Pulliam, Sossi, Stull, Taylor, and Weldon**

Introduced and read first time: January 27, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Adult Sexual Matter - Transmission via Electronic Mail - Use of .sex Suffix**

3 FOR the purpose of prohibiting a person from knowingly sending a commercial
4 electronic mail message that originates or terminates in the State unless the
5 originating electronic mail address includes the suffix ".sex", if the electronic
6 mail message contains visual depictions, verbal descriptions, or links to a
7 commercially operated website that contains visual depictions or verbal
8 descriptions of certain sexual matter; making a violation of this Act a
9 misdemeanor subject to certain penalties; authorizing certain persons to file a
10 civil action for a violation of this Act; providing for certain damages for a
11 violation of this Act; providing that this Act does not enlarge the jurisdiction of
12 the District Court to order certain relief; defining certain terms; and generally
13 relating to commercial electronic mail messages and adult sexual matter.

14 BY adding to

15 Article - Criminal Law

16 Section 11-106.1

17 Annotated Code of Maryland

18 (2002 Volume and 2004 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Criminal Law**

22 11-106.1.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN
26 ELECTRONIC MAIL MESSAGE SENT PRIMARILY FOR THE PURPOSE OF COMMERCIAL
27 ADVERTISEMENT OR PROMOTION OF:

- 1 (I) A COMMERCIAL PRODUCT;
- 2 (II) A COMMERCIAL SERVICE;
- 3 (III) THE CONTENT OF AN INTERNET WEBSITE; OR
- 4 (IV) A WEBSITE OPERATED FOR A COMMERCIAL PURPOSE.

5 (3) "ELECTRONIC MAIL" MEANS THE TRANSMISSION OF INFORMATION
6 OR A COMMUNICATION, BY THE USE OF A COMPUTER OR OTHER ELECTRONIC
7 MEANS, THAT IS:

- 8 (I) SENT TO A PERSON IDENTIFIED BY A UNIQUE ADDRESS; AND
- 9 (II) RECEIVED BY THE PERSON.

10 (4) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON,
11 INCLUDING AN INTERNET SERVICE PROVIDER, THAT:

- 12 (I) IS AN INTERMEDIARY IN SENDING AND RECEIVING
13 ELECTRONIC MAIL; AND
- 14 (II) PROVIDES TO THE PUBLIC THE ABILITY TO SEND OR RECEIVE
15 ELECTRONIC MAIL TO OR FROM AN ELECTRONIC MAIL ACCOUNT OR ON-LINE USER
16 ACCOUNT.

17 (5) "INTERNET" MEANS THE INTERNATIONAL COMPUTER NETWORK OF
18 BOTH FEDERAL AND NONFEDERAL INTEROPERABLE PACKET-SWITCHED DATA
19 NETWORKS.

20 (6) "PERSON" INCLUDES AN ELECTRONIC MAIL SERVICE PROVIDER.

21 (B) A PERSON MAY NOT KNOWINGLY SEND A COMMERCIAL ELECTRONIC MAIL
22 MESSAGE THAT ORIGINATES OR TERMINATES IN THIS STATE UNLESS THE
23 ORIGINATING ELECTRONIC MAIL ADDRESS INCLUDES THE SUFFIX ".SEX", IF THE
24 COMMERCIAL ELECTRONIC MAIL MESSAGE CONTAINS:

25 (1) A PICTURE, PHOTOGRAPH, DRAWING, OR OTHER VISUAL
26 REPRESENTATION OR IMAGE OF AN INDIVIDUAL OR PORTION OF A HUMAN BODY
27 THAT DEPICTS SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL
28 EXCITEMENT;

29 (2) A VERBAL DESCRIPTION OR NARRATIVE ACCOUNT OF
30 SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL EXCITEMENT; OR

31 (3) LINKS TO A COMMERCIALLY OPERATED WEBSITE THAT CONTAINS
32 DESCRIPTIONS OR VISUAL DEPICTIONS OF SADOMASOCHISTIC ABUSE, SEXUAL
33 CONDUCT, OR SEXUAL EXCITEMENT.

34 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
35 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 PER VIOLATION.

1 (D) (1) A PERSON WHO RECEIVES A COMMERCIAL ELECTRONIC MAIL
2 MESSAGE IN VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE
3 VIOLATOR IN A COURT OF COMPETENT JURISDICTION.

4 (2) THE COURT MAY:

5 (I) IMPOSE PRELIMINARY AND PERMANENT INJUNCTIONS TO
6 PREVENT OR RESTRAIN A VIOLATION OF THIS SECTION;

7 (II) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE
8 IMPOUNDING OF ANY COMPUTER OR RELATED EQUIPMENT THAT IS IN THE
9 CUSTODY OR CONTROL OF THE VIOLATOR AND THAT THE COURT HAS REASONABLE
10 CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION OF THIS SECTION;

11 (III) AWARD:

12 1. THE GREATER OF ACTUAL DAMAGES AND NOMINAL
13 DAMAGES NOT EXCEEDING \$1,000 PER VIOLATION; AND

14 2. COURT COSTS AND REASONABLE ATTORNEY'S FEES; AND

15 (IV) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A
16 VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR
17 DESTRUCTION OF ANY COMPUTER OR RELATED EQUIPMENT INVOLVED IN THE
18 VIOLATION THAT IS IN THE CUSTODY OR CONTROL OF THE VIOLATOR OR THAT HAS
19 BEEN IMPOUNDED UNDER ITEM (II) OF THIS PARAGRAPH.

20 (3) THIS SUBSECTION DOES NOT ALLOW THE DISTRICT COURT TO
21 GRANT RELIEF UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.

22 (E) EACH COPY OF A COMMERCIAL ELECTRONIC MAIL MESSAGE THAT IS
23 ADDRESSED TO MORE THAN ONE RECIPIENT AND THAT IS SENT OR RECEIVED IN
24 THIS STATE IN VIOLATION OF THIS SECTION IS CONSIDERED A SEPARATE
25 VIOLATION.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2005.