

HOUSE BILL 56

Unofficial Copy  
C2

1999 Regular Session  
9lr0378

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By: **Delegate Owings (By Request)**  
Introduced and read first time: January 18, 1999  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation - Unsolicited Electronic Mail Advertisements**

3 FOR the purpose of prohibiting the use of an electronic mail service provider's  
4 equipment to transmit unsolicited electronic mail advertisements under certain  
5 circumstances; authorizing an electronic mail service provider to recover certain  
6 damages and civil penalties under certain circumstances; authorizing a court to  
7 award attorney's fees and court costs under certain circumstances; defining  
8 certain terms; and generally relating to the transmission of unsolicited  
9 electronic mail advertisements.

10 BY adding to

11 Article - Business Regulation  
12 Section 19-103  
13 Annotated Code of Maryland  
14 (1998 Replacement Volume)

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

17 **Article - Business Regulation**

18 19-103.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
20 INDICATED.

21 (2) "ELECTRONIC MAIL" MEANS THE TRANSMISSION OF INFORMATION  
22 OR A COMMUNICATION BY THE USE OF A COMPUTER OR OTHER ELECTRONIC MEANS  
23 SENT TO A PERSON IDENTIFIED BY A UNIQUE ADDRESS AND RECEIVED BY THAT  
24 PERSON.

25 (3) "ELECTRONIC MAIL ADVERTISEMENT" MEANS ANY ELECTRONIC  
26 MESSAGE, THE PRINCIPAL PURPOSE OF WHICH IS TO PROMOTE, DIRECTLY OR  
27 INDIRECTLY, THE SALE OR OTHER DISTRIBUTION OF GOODS OR SERVICES TO THE  
28 RECIPIENT.

1 (4) "UNSOLICITED ELECTRONIC MAIL ADVERTISEMENT" MEANS ANY  
2 ELECTRONIC MAIL ADVERTISEMENT THAT:

3 (I) IS ADDRESSED TO A RECIPIENT WITH WHOM THE INITIATOR  
4 DOES NOT HAVE AN EXISTING BUSINESS OR PERSONAL RELATIONSHIP; AND

5 (II) IS NOT SENT AT THE REQUEST, OR WITH THE EXPRESS  
6 CONSENT, OF THE RECIPIENT.

7 (5) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A BUSINESS OR  
8 ORGANIZATION QUALIFIED TO DO BUSINESS IN MARYLAND THAT:

9 (I) PROVIDES REGISTERED USERS THE ABILITY TO SEND OR  
10 RECEIVE ELECTRONIC MAIL THROUGH EQUIPMENT LOCATED IN THE STATE; AND

11 (II) IS AN INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC  
12 MAIL.

13 (6) "REGISTERED USER" MEANS ANY PERSON THAT MAINTAINS AN  
14 ELECTRONIC MAIL ADDRESS WITH AN ELECTRONIC SERVICE PROVIDER.

15 (B) A REGISTERED USER OF AN ELECTRONIC MAIL SERVICE PROVIDER MAY  
16 NOT USE OR CAUSE TO BE USED THAT PROVIDER'S EQUIPMENT LOCATED IN THE  
17 STATE IN VIOLATION OF THAT PROVIDER'S POLICY PROHIBITING OR RESTRICTING  
18 THE USE OF ITS SERVICE OR EQUIPMENT FOR THE INITIAL SENDING OF  
19 UNSOLICITED ELECTRONIC MAIL ADVERTISEMENTS.

20 (C) A PERSON MAY NOT USE OR CAUSE TO BE USED, AS THE INITIAL SENDER  
21 OF AN UNSOLICITED ELECTRONIC MAIL ADVERTISEMENT, AN ELECTRONIC MAIL  
22 SERVICE PROVIDER'S EQUIPMENT LOCATED IN THIS STATE IN VIOLATION OF THAT  
23 PROVIDER'S POLICY PROHIBITING OR RESTRICTING THE USE OF ITS EQUIPMENT TO  
24 DELIVER UNSOLICITED ELECTRONIC MAIL ADVERTISEMENTS TO ITS REGISTERED  
25 USERS.

26 (D) IT IS NOT A VIOLATION OF THIS SECTION FOR AN ELECTRONIC MAIL  
27 SERVICE PROVIDER TO HANDLE OR RETRANSMIT AN ELECTRONIC MESSAGE  
28 CONTAINING AN UNSOLICITED ELECTRONIC MAIL ADVERTISEMENT.

29 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR RESTRICT:

30 (1) THE RIGHTS OF AN ELECTRONIC MAIL SERVICE PROVIDER UNDER 47  
31 U.S.C. § 230(C)(1);

32 (2) ANY DECISION OF AN ELECTRONIC MAIL SERVICE PROVIDER TO  
33 ALLOW OR RESTRICT ACCESS TO OR USE OF ITS SYSTEM; OR

34 (3) ANY EXERCISE OF THE EDITORIAL AUTHORITY OF THE ELECTRONIC  
35 MAIL SERVICE PROVIDER.

1 (F) (1) IN ADDITION TO ANY OTHER ACTION AVAILABLE UNDER LAW, ANY  
2 ELECTRONIC MAIL SERVICE PROVIDER WHOSE POLICY ON UNSOLICITED  
3 ELECTRONIC MAIL ADVERTISEMENTS IS VIOLATED AS PROVIDED IN THIS SECTION  
4 MAY BRING A CIVIL ACTION TO RECOVER:

5 (I) THE ACTUAL MONETARY LOSS SUFFERED BY THAT PROVIDER  
6 BECAUSE OF THAT VIOLATION; OR

7 (II) LIQUIDATED DAMAGES OF \$50 FOR EACH ELECTRONIC MAIL  
8 MESSAGE INITIATED OR DELIVERED IN VIOLATION OF THIS SECTION, UP TO A  
9 MAXIMUM OF \$25,000 PER DAY.

10 (2) IN AN ACTION BROUGHT UNDER THIS SECTION, A COURT MAY  
11 AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PARTY.

12 (3) IN AN ACTION BROUGHT UNDER THIS SECTION, AN ELECTRONIC  
13 MAIL PROVIDER SHALL BE REQUIRED TO ESTABLISH AS AN ELEMENT OF ITS CAUSE  
14 OF ACTION THAT PRIOR TO THE ALLEGED VIOLATION, THE DEFENDANT HAD ACTUAL  
15 NOTICE OF:

16 (I) THE ELECTRONIC MAIL SERVICE PROVIDER'S POLICY ON  
17 UNSOLICITED ELECTRONIC MAIL ADVERTISING; AND

18 (II) THE FACT THAT THE DEFENDANT'S ELECTRONIC MAIL  
19 ADVERTISEMENTS WOULD USE OR CAUSE TO BE USED THE ELECTRONIC MAIL  
20 SERVICE PROVIDER'S EQUIPMENT LOCATED IN THE STATE.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 1999.