

SENATE BILL 177

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2000 Regular Session
0lr0513
CF 0lr2725

By: **Senators Miller, Teitelbaum, and Hogan**
Introduced and read first time: January 24, 2000
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 7, 2000

CHAPTER _____

1 AN ACT concerning

2 **Crimes - Unsolicited Commercial Electronic Mail - Fraudulent Information**

3 FOR the purpose of prohibiting a person from knowingly falsifying or forging certain
4 information in connection with the transmission of certain types of electronic
5 mail through or into certain computers and computer networks; prohibiting a
6 person from knowingly selling, giving, distributing, or possessing with a certain
7 intent certain types of computer software; authorizing certain injured persons to
8 bring a civil action against a person that violates this Act under certain
9 circumstances; providing certain injured persons specified civil remedies in
10 certain circumstances; providing that a person who violates this Act is guilty of
11 a misdemeanor and is subject to certain punishment; providing for the effect of
12 this Act; defining certain terms; and generally relating to the criminal use of
13 fraudulent information in sending unsolicited commercial electronic mail.

14 BY adding to
15 Article 27 - Crimes and Punishments
16 Section 555D
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1999 Supplement)

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

Article 27 - Crimes and Punishments

2 555D.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (2) "COMPUTER", "COMPUTER NETWORK", AND "COMPUTER SOFTWARE"
6 HAVE THE MEANINGS INDICATED IN ARTICLE 27, § 146 OF THE CODE.

7 (3) "ELECTRONIC MAIL" HAS THE MEANING INDICATED IN ARTICLE 27, §
8 555C OF THE CODE.

9 (4) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A PERSON THAT:

10 (I) IS AN INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC
11 MAIL; AND

12 (II) PROVIDES TO ELECTRONIC MAIL SERVICE SUBSCRIBERS THE
13 ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL.

14 (5) "ELECTRONIC MAIL SERVICE SUBSCRIBER" MEANS A PERSON THAT
15 IS AN END-USER OF ELECTRONIC MAIL SERVICES.

16 (6) (I) "UNSOLICITED COMMERCIAL ELECTRONIC MAIL" MEANS
17 ELECTRONIC MAIL THAT:

18 1. ~~CONTAINS COMMERCIAL MATERIAL IS SENT FOR THE~~
19 PURPOSE OF PROMOTING THE SALE OR LEASE OF REAL PROPERTY, GOODS, OR
20 SERVICES; AND

21 2. IS SENT TO AN ADDRESS WITHOUT THE CONSENT OF AN
22 ADDRESSEE.

23 (II) "UNSOLICITED COMMERCIAL ELECTRONIC MAIL" DOES NOT
24 INCLUDE ELECTRONIC MAIL SENT BY AN ORGANIZATION TO A MEMBER OF THE
25 ORGANIZATION.

26 (B) A PERSON MAY NOT KNOWINGLY FALSIFY OR FORGE ELECTRONIC MAIL
27 TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION IN CONNECTION
28 WITH THE TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL
29 THROUGH OR INTO A COMPUTER OR COMPUTER NETWORK OF AN ELECTRONIC MAIL
30 SERVICE PROVIDER OR AN ELECTRONIC MAIL SERVICE SUBSCRIBER.

31 (C) A PERSON MAY NOT KNOWINGLY SELL, GIVE, DISTRIBUTE, OR POSSESS
32 WITH THE INTENT TO SELL, GIVE, OR DISTRIBUTE COMPUTER SOFTWARE THAT:

33 (1) IS PRIMARILY DESIGNED OR PRODUCED TO FACILITATE OR ENABLE
34 THE FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER
35 ROUTING INFORMATION;

1 (2) HAS ONLY LIMITED COMMERCIAL SIGNIFICANT PURPOSE OR USE
2 OTHER THAN TO FACILITATE OR ENABLE THE FALSIFICATION OF ELECTRONIC MAIL
3 TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION; OR

4 (3) IS MARKETED BY THE PERSON, OR ANOTHER ACTING IN CONCERT
5 WITH THE PERSON WITH THE PERSON'S KNOWLEDGE, FOR USE IN FACILITATING OR
6 ENABLING THE FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION
7 OR OTHER ROUTING INFORMATION.

8 (D) (1) A PERSON THAT IS INJURED BY A VIOLATION OF THIS SECTION MAY
9 BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A
10 PERSON THAT VIOLATES THIS SECTION.

11 (2) AS A RESULT OF A SUCCESSFUL CIVIL ACTION UNDER PARAGRAPH
12 (1) OF THIS SUBSECTION, A COURT MAY AWARD AN INJURED PERSON, OTHER THAN
13 THE ELECTRONIC MAIL SERVICE PROVIDER:

14 (I) ATTORNEYS' FEES AND COURT COSTS; AND

15 (II) AT THE ELECTION OF THE INJURED PERSON:

16 1. ACTUAL DAMAGES; OR

17 2. THE LESSER OF:

18 A. \$10 FOR EACH UNSOLICITED COMMERCIAL ELECTRONIC
19 MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS SECTION; OR

20 B. \$25,000 FOR EACH DAY THAT A VIOLATION OCCURRED.

21 (3) AS A RESULT OF A SUCCESSFUL CIVIL ACTION UNDER PARAGRAPH
22 (1) OF THIS SUBSECTION, A COURT MAY AWARD AN INJURED ELECTRONIC MAIL
23 SERVICE PROVIDER:

24 (I) ATTORNEYS' FEES AND COURT COSTS; AND

25 (II) AT THE ELECTION OF THE INJURED ELECTRONIC MAIL
26 SERVICE PROVIDER:

27 1. ACTUAL DAMAGES; OR

28 2. THE GREATER OF:

29 A. \$10 FOR EACH UNSOLICITED COMMERCIAL ELECTRONIC
30 MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS SECTION; OR

31 B. \$25,000 FOR EACH DAY THAT A VIOLATION OCCURRED.

32 (E) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
33 AND ON CONVICTION IS SUBJECT TO, FOR EACH VIOLATION, A FINE NOT EXCEEDING
34 \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

1 (F) THIS SECTION DOES NOT CREATE A CAUSE OF ACTION FOR AN
2 ELECTRONIC MAIL SERVICE SUBSCRIBER AGAINST AN ELECTRONIC MAIL SERVICE
3 PROVIDER THAT MERELY TRANSMITS UNSOLICITED COMMERCIAL ELECTRONIC
4 MAIL OVER ITS COMPUTER NETWORK.

5 (G) THIS SECTION DOES NOT PRECLUDE A COURT FROM AWARDING
6 REMEDIES AVAILABLE UNDER OTHER PROVISIONS OF THE CODE IN ADDITION TO
7 THOSE AWARDED UNDER THIS SECTION.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2000.