

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**  
**Revised**

Senate Bill 538  
Finance

(Senator Teitelbaum, *et al.*)

Economic Matters

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**Commercial Law - Electronic Mail - Unauthorized, False, or Misleading  
Information**

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This bill prohibits a person from initiating, conspiring with another person to initiate, or assisting in the transmission of a commercial electronic mail (e-mail) message that: (1) misrepresents or obscures any information relating to the point of origin or transmission path of the message; or (2) contains false or misleading information in the subject line. The bill applies to commercial e-mail messages that are sent from a computer located in Maryland or to an electronic mail address that the sender knows or has reason to know is held by a resident of the State. Violators are liable to a recipient of the e-mail or a third party without whose permission the third party's domain name or e-mail address was used for attorney's fees and the greater of \$500 or actual damages. Violators are liable to an interactive service provider for attorney's fees and the greater of \$1,000 or actual damages.

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**Fiscal Summary**

**State Effect:** Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** No provision specifically prohibits the transmission of misleading e-mail. However, under the Maryland Consumer Protection Act, a person may not engage in any unfair or deceptive trade practice in: (1) the sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; or (2) the offer for sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service. A practice that is prohibited by the Act violates the Act, regardless of whether a consumer in fact has been misled, deceived, or damaged as a result of the practice.

**Background:** The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims. The division may attempt conciliation, issue cease and desist orders, or seek action in court, including an injunction, to enforce the Maryland Consumer Protection Act.

At the federal level, legislation has been introduced in the 107<sup>th</sup> Congress that would restrict or outlaw unsolicited commercial e-mail (UCE), also commonly known as “spam.”

Also at the federal level, the Federal Trade Commission (FTC) has recently successfully settled civil actions against persons who were alleged to use spam to conduct “pyramid schemes,” in which consumers are told they can earn “free” money on the Internet. In an e-mail message or Internet ad, the new recruit to the scheme is asked for a cash payment. Upon receipt of the payment, the recruit is instructed to enter his or her name and address into the top position on a list and move other names down. The recruit is then instructed to send solicitation to new names. The FTC also advises consumers that they may forward “unwanted or deceptive” spam to the FTC’s Internet spam database. If a consumer has been the victim of a “spam scam,” the consumer may file a complaint with the FTC.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None listed, although HB 915 is identical.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

**Fiscal Note History:** First Reader - March 14, 2002  
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