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By: **Delegates Aumann, Amedori, Barkley, Bates, Boschert, Boteler, Boutin, V. Clagett, Cluster, DeBoy, Eckardt, Edwards, Elliott, Elmore, Frank, Haddaway, Hogan, Impallaria, Jennings, Kach, Krebs, Leopold, Malone, McComas, McDonough, McMillan, Miller, Myers, O'Donnell, Parker, Parrott, Petzold, Shank, Smigiel, Sossi, Stocksedale, Stull, Walkup, Weldon, and Zirkin**

Introduced and read first time: January 21, 2004

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Commercial Law - Unsolicited Sexually Explicit Commercial Electronic**  
3                                   **Mail and Pop-Up Advertisements**

4 FOR the purpose of prohibiting a person from initiating, conspiring to initiate, or  
5 assisting in the transmission of unsolicited sexually explicit commercial  
6 electronic mail that does not include certain characters in the subject line;  
7 prohibiting a person that is an administrator or host of a website from  
8 manipulating an individual's computer to display a pop-up advertisement if the  
9 individual's computer is in the State or the person knows or should have known  
10 that the individual's computer is held by a resident of the State, unless the  
11 person establishes a means to disable the pop-up advertisements on the  
12 website; establishing a certain penalty; defining certain terms; and generally  
13 relating to unsolicited sexually explicit commercial electronic mail and pop-up  
14 advertisements.

15 BY repealing and reenacting, with amendments,  
16 Article - Commercial Law  
17 Section 14-3001 through 14-3003  
18 Annotated Code of Maryland  
19 (2000 Replacement Volume and 2003 Supplement)

20 BY adding to  
21 Article - Commercial Law  
22 Section 14-3002.1  
23 Annotated Code of Maryland  
24 (2000 Replacement Volume and 2003 Supplement)

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

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**Article - Commercial Law**

2 14-3001.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) (1) "Commercial electronic mail" means electronic mail that advertises  
5 real property, goods, or services for sale or lease.6 (2) "Commercial electronic mail" does not include electronic mail to  
7 which an interactive computer service provider has attached an advertisement in  
8 exchange for free use of an electronic mail account.9 (c) (1) "Interactive computer service provider" means an information  
10 service, system, or access software provider that provides or enables computer access  
11 by multiple users to a computer service.12 (2) "Interactive computer service provider" includes a service or system  
13 that provides access to the Internet and systems operated or services offered by a  
14 library or educational institution.15 (D) "POP-UP ADVERTISEMENT" MEANS AN ADVERTISEMENT THAT APPEARS  
16 IN A SEPARATE BROWSER WINDOW ABOVE A WEB PAGE.17 (E) "UNSOLICITED SEXUALLY EXPLICIT COMMERCIAL ELECTRONIC MAIL"  
18 MEANS COMMERCIAL ELECTRONIC MAIL THAT:

19 (1) IS TRANSMITTED TO A RECIPIENT WHO:

20 (I) HAS NOT EXPRESSLY CONSENTED TO THE TRANSMISSION; OR

21 (II) DOES NOT HAVE A PREEXISTING BUSINESS OR PERSONAL  
22 RELATIONSHIP WITH THE SENDER; AND23 (2) CONTAINS A VISUAL DEPICTION, IN ACTUAL OR SIMULATED FORM,  
24 OR AN EXPLICIT DESCRIPTION IN A PREDOMINATELY SEXUAL CONTEXT, OF NUDITY,  
25 HUMAN GENITALIA, OR ANY ACT OF NATURAL OR UNNATURAL SEXUAL  
26 INTERCOURSE.

27 14-3002.

28 (a) This section does not apply to an interactive computer service provider or a  
29 telecommunication utility to the extent that the interactive computer service provider  
30 or the telecommunication utility merely handles, retransmits, or carries a  
31 transmission of commercial electronic mail.32 (b) A person may not initiate the transmission, conspire with another person  
33 to initiate the transmission, or assist in the transmission of commercial electronic  
34 mail that:

1 (1) Is from a computer in the State or is sent to an electronic mail  
2 address that the sender knows or should have known is held by a resident of the  
3 State; and

4 (2) (i) Uses a third party's Internet domain name or electronic mail  
5 address without the permission of the third party;

6 (ii) Contains false or misleading information about the origin or the  
7 transmission path of the commercial electronic mail; [or]

8 (iii) Contains false or misleading information in the subject line that  
9 has the capacity, tendency, or effect of deceiving the recipient; OR

10 (IV) FOR UNSOLICITED SEXUALLY EXPLICIT COMMERCIAL  
11 ELECTRONIC MAIL, DOES NOT INCLUDE IN THE SUBJECT LINE "ADV:ADULT" AS THE  
12 FIRST NINE CHARACTERS.

13 (c) A person is presumed to know that the intended recipient of commercial  
14 electronic mail is a resident of the State if the information is available on request  
15 from the registrant of the Internet domain name contained in the recipient's  
16 electronic mail address.

17 (d) An interactive computer service provider:

18 (1) May block the receipt or transmission through its interactive  
19 computer service of commercial electronic mail that it reasonably believes is or will be  
20 sent in apparent violation of this section; and

21 (2) May not be held liable for an action under item (1) of this subsection  
22 that is voluntarily taken in good faith.

23 14-3002.1.

24 A PERSON THAT IS AN ADMINISTRATOR OR HOST OF A WEBSITE MAY NOT  
25 MANIPULATE AN INDIVIDUAL'S COMPUTER TO DISPLAY A POP-UP ADVERTISEMENT  
26 IF THE INDIVIDUAL'S COMPUTER IS IN THE STATE OR THE PERSON KNOWS OR  
27 SHOULD HAVE KNOWN THAT THE INDIVIDUAL'S COMPUTER IS HELD BY A RESIDENT  
28 OF THE STATE UNLESS THE PERSON ESTABLISHES A MEANS TO DISABLE THE  
29 POP-UP ADVERTISEMENTS ON THE WEBSITE.

30 14-3003.

31 A person who violates this subtitle is liable for reasonable attorney's fees and for  
32 damages:

33 (1) To the recipient of commercial electronic mail, in an amount equal to  
34 the greater of \$500 or the recipient's actual damages;

1           (2)       To the third party without whose permission the third party's  
2 Internet domain name or electronic mail address was used, in an amount equal to the  
3 greater of \$500 or the third party's actual damages; [and]

4           (3)       To an interactive computer service provider, in an amount equal to  
5 the greater of \$1,000 or the interactive computer service provider's actual damages;  
6 AND

7           (4)       TO AN INDIVIDUAL WHOSE COMPUTER DISPLAYS A POP-UP  
8 ADVERTISEMENT IN VIOLATION OF § 14-3002.1 OF THIS SUBTITLE, IN AN AMOUNT  
9 EQUAL TO THE GREATER OF \$500 OR THE INDIVIDUAL'S ACTUAL DAMAGES.

10       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
11 effect October 1, 2004.