
By: **Delegates Quinter, Amedori, Carter, Dumais, Gutierrez, Kelly, Lee,
McComas, McMillan, Shank, Simmons, and Sophocleus**

Introduced and read first time: February 13, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Spam Control Act**

3 FOR the purpose of prohibiting a person from using certain protected computers to
4 relay or retransmit certain commercial electronic mail messages with the intent
5 to deceive or mislead recipients or an Internet service provider under certain
6 circumstances; prohibiting a person from materially falsifying certain header
7 information in certain commercial electronic mail messages under certain
8 circumstances; prohibiting a person from registering for certain electronic mail
9 accounts or domain names under certain circumstances; prohibiting a person
10 from conspiring to or falsely representing the right to use certain Internet
11 protocol addresses under certain circumstances; providing that certain
12 violations of this Act are misdemeanors; providing for certain penalties and
13 fines for certain violations of this Act under certain circumstances; authorizing
14 the forfeiture of certain moneys, income, and property under certain
15 circumstances; authorizing the Attorney General to institute a civil action under
16 certain circumstances; providing for a civil penalty; authorizing certain
17 injunctive relief under certain circumstances; defining certain terms; and
18 generally relating to the Maryland Spam Control Act.

19 BY adding to
20 Article - Criminal Law
21 Section 3-805.1
22 Annotated Code of Maryland
23 (2002 Volume and 2003 Supplement)

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

26 **Article - Criminal Law**

27 3-805.1.

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.

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

4 (I) A COMMERCIAL PRODUCT;

5 (II) A COMMERCIAL SERVICE;

6 (III) THE CONTENT ON AN INTERNET WEBSITE; OR

7 (IV) A WEBSITE OPERATED FOR A COMMERCIAL PURPOSE.

8 (3) "DOMAIN NAME" MEANS ANY ALPHANUMERIC DESIGNATION THAT IS
9 REGISTERED WITH OR ASSIGNED BY A DOMAIN NAME REGISTRAR, DOMAIN NAME
10 REGISTRY, OR OTHER DOMAIN NAME REGISTRATION AUTHORITY AS PART OF AN
11 ELECTRONIC MAIL ADDRESS ON THE INTERNET.

12 (4) "FINANCIAL INSTITUTION" HAS THE SAME MEANING AS PROVIDED IN
13 § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

14 (5) "HEADER INFORMATION" MEANS THE SOURCE, DESTINATION, AND
15 ROUTING INFORMATION ATTACHED TO AN ELECTRONIC MAIL MESSAGE, INCLUDING
16 THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL ADDRESS,
17 AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING OR
18 PURPORTING TO IDENTIFY A PERSON INITIATING THE MESSAGE.

19 (6) (I) THE TERM "INITIATE", WHEN USED WITH RESPECT TO A
20 COMMERCIAL ELECTRONIC MAIL MESSAGE, MEANS TO ORIGINATE OR TRANSMIT
21 THE MESSAGE OR TO PROCURE THE ORIGATION OR TRANSMISSION OF THE
22 MESSAGE.

23 (II) THE TERM "INITIATE" DOES NOT INCLUDE THE ACTIONS OF AN
24 INTERNET SERVICE PROVIDER USED BY ANOTHER PERSON FOR THE TRANSMISSION,
25 ROUTING, RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC
26 TECHNICAL PROCESS OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER
27 PERSON HAS PROVIDED AND SELECTED THE RECIPIENT ELECTRONIC MAIL
28 ADDRESS.

29 (7) "INTERNET" MEANS THE INTERNATIONAL COMPUTER NETWORK OF
30 BOTH FEDERAL AND NONFEDERAL INTEROPERABLE PACKET SWITCHED DATA
31 NETWORKS.

32 (8) "INTERNET PROTOCOL ADDRESS" MEANS THE STRING OF NUMBERS
33 BY WHICH A LOCATION ON THE INTERNET IS IDENTIFIED BY ROUTERS OR OTHER
34 COMPUTERS CONNECTED TO THE INTERNET.

35 (9) (I) "INTERNET SERVICE PROVIDER" MEANS A SERVICE THAT
36 ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL, OR OTHER
37 SERVICES OFFERED OVER THE INTERNET THAT MAY INCLUDE ACCESS TO

1 PROPRIETARY CONTENT, INFORMATION, AND OTHER SERVICES AS PART OF A
2 PACKAGE OF SERVICES OFFERED TO SUBSCRIBERS.

3 (II) "INTERNET SERVICE PROVIDER" DOES NOT INCLUDE
4 TELECOMMUNICATIONS SERVICES.

5 (10) "MULTIPLE" MEANS:

6 (I) MORE THAN 10 COMMERCIAL ELECTRONIC MAIL MESSAGES
7 DURING A 24-HOUR PERIOD;

8 (II) MORE THAN 100 COMMERCIAL ELECTRONIC MAIL MESSAGES
9 DURING A 30-DAY PERIOD; OR

10 (III) MORE THAN 1,000 COMMERCIAL ELECTRONIC MAIL MESSAGES
11 DURING A 1-YEAR PERIOD.

12 (11) "PROTECTED COMPUTER" MEANS A COMPUTER USED:

13 (I) EXCLUSIVELY BY STATE GOVERNMENT OR A FINANCIAL
14 INSTITUTION; OR

15 (II) BY OR FOR STATE GOVERNMENT OR A FINANCIAL
16 INSTITUTION; OR

17 (III) IN INTRASTATE OR INTERSTATE COMMUNICATION.

18 (B) A PERSON MAY NOT KNOWINGLY:

19 (1) USE A PROTECTED COMPUTER TO RELAY OR RETRANSMIT MULTIPLE
20 COMMERCIAL ELECTRONIC MAIL MESSAGES WITH THE INTENT TO DECEIVE OR
21 MISLEAD RECIPIENTS OR AN INTERNET SERVICE PROVIDER AS TO THE ORIGIN OF
22 THE MESSAGE;

23 (2) MATERIALLY FALSIFY HEADER INFORMATION IN MULTIPLE
24 COMMERCIAL ELECTRONIC MAIL MESSAGES AND INTENTIONALLY INITIATE THE
25 TRANSMISSION OF THE MESSAGES;

26 (3) REGISTER, USING INFORMATION THAT MATERIALLY FALSIFIES THE
27 IDENTITY OF THE ACTUAL REGISTRANT, FOR FIVE OR MORE ELECTRONIC MAIL
28 ACCOUNTS OR ON-LINE USER ACCOUNTS OR TWO OR MORE DOMAIN NAMES AND
29 INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE COMMERCIAL
30 ELECTRONIC MAIL MESSAGES FROM ANY COMBINATION OF ACCOUNTS OR DOMAIN
31 NAMES; OR

32 (4) CONSPIRE TO OR FALSELY REPRESENT THE RIGHT TO USE FIVE OR
33 MORE INTERNET PROTOCOL ADDRESSES AND INTENTIONALLY INITIATE THE
34 TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM
35 THE INTERNET PROTOCOL ADDRESSES.

1 (C) (1) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS
2 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT
3 NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$5,000 OR BOTH;

4 (2) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION
5 INVOLVING THE TRANSMISSION OF MORE THAN 250 COMMERCIAL ELECTRONIC MAIL
6 MESSAGES DURING A 24-HOUR PERIOD, 2,500 COMMERCIAL ELECTRONIC MAIL
7 MESSAGES DURING ANY 30-DAY PERIOD, OR 25,000 COMMERCIAL ELECTRONIC MAIL
8 MESSAGES DURING ANY 1-YEAR PERIOD IS GUILTY OF A MISDEMEANOR AND ON
9 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE
10 NOT EXCEEDING \$10,000 OR BOTH;

11 (3) A PERSON WHO VIOLATES SUBSECTION (B)(3) OR (B)(4) OF THIS
12 SECTION INVOLVING 20 OR MORE ELECTRONIC MAIL ACCOUNTS OR 10 OR MORE
13 DOMAIN NAMES AND INTENTIONALLY INITIATES THE TRANSMISSION OF MULTIPLE
14 COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THE ACCOUNTS OR USING THE
15 DOMAIN NAMES IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO
16 IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR
17 BOTH;

18 (4) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION THAT
19 CAUSES A LOSS OF \$500 OR MORE DURING ANY 1-YEAR PERIOD IS GUILTY OF A
20 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
21 EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH;

22 (5) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IN
23 CONCERT WITH THREE OR MORE OTHER PERSONS AS THE LEADER OR ORGANIZER
24 OF THE ACTION THAT CONSTITUTES THE VIOLATION IS GUILTY OF A MISDEMEANOR
25 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A
26 FINE NOT EXCEEDING \$10,000 OR BOTH; AND

27 (6) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IN
28 FURTHERANCE OF A FELONY, OR WHO HAS PREVIOUSLY BEEN CONVICTED OF AN
29 OFFENSE UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR UNDER ANY
30 FEDERAL LAW INVOLVING THE TRANSMISSION OF MULTIPLE COMMERCIAL
31 ELECTRONIC MAIL MESSAGES IS GUILTY OF A FELONY AND ON CONVICTION IS
32 SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING
33 \$25,000 OR BOTH.

34 (D) IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE COURT
35 MAY DIRECT THAT A PERSON CONVICTED OF A VIOLATION OF THIS SECTION FORFEIT
36 TO THE STATE:

37 (1) ANY MONEYS AND OTHER INCOME, INCLUDING ALL PROCEEDS
38 EARNED BUT NOT YET RECEIVED BY A DEFENDANT FROM A THIRD PARTY AS A
39 RESULT OF THE DEFENDANT'S VIOLATION OF THIS SECTION; AND

40 (2) ALL COMPUTER EQUIPMENT, COMPUTER SOFTWARE, AND
41 PERSONAL PROPERTY USED IN CONNECTION WITH A VIOLATION OF THIS SECTION
42 KNOWN BY THE OWNER TO HAVE BEEN USED IN VIOLATION OF THIS SECTION.

1 (E) (1) AN ACTION BROUGHT UNDER THIS SUBSECTION SHALL BE
2 COMMENCED WITHIN 2 YEARS AFTER THE COMMISSION OF THE ACT.

3 (2) THE ATTORNEY GENERAL MAY INSTITUTE A CIVIL ACTION AGAINST
4 A PERSON WHO VIOLATES THIS SECTION TO RECOVER FOR THE STATE A CIVIL
5 PENALTY NOT EXCEEDING:

6 (I) \$25,000 PER DAY OF VIOLATION; OR

7 (II) NOT LESS THAN \$2 NOR MORE THAN \$8 PER COMMERCIAL
8 ELECTRONIC MAIL MESSAGE INITIATED IN VIOLATION OF THIS SECTION.

9 (3) THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION IN A CIVIL
10 ACTION TO PROHIBIT A PERSON WHO HAS ENGAGED IN OR IS ENGAGED IN A
11 VIOLATION OF THIS SECTION FROM ENGAGING IN THE VIOLATION.

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