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

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Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 30, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Spam ~~Control~~ Deterrence 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~~ electronic mail service provider  
6 under certain circumstances; prohibiting a person from materially falsifying  
7 certain header information in certain commercial electronic mail messages  
8 under certain circumstances; prohibiting a person from registering for certain  
9 electronic mail accounts or domain names under certain circumstances;  
10 prohibiting a person from conspiring to or falsely representing the right to use  
11 certain Internet protocol addresses under certain circumstances; providing that  
12 certain violations of this Act are misdemeanors; prohibiting the provision or  
13 selection of certain electronic mail addresses under certain circumstances;  
14 providing for certain penalties and fines for certain violations of this Act under  
15 certain circumstances; providing for additional penalties and fines under certain  
16 circumstances; authorizing the forfeiture of certain moneys, income, and  
17 property under certain circumstances; authorizing the Attorney General to  
18 institute a civil action under certain circumstances; providing for a civil penalty;  
19 authorizing certain injunctive relief under certain circumstances; authorizing  
20 the Attorney General to enforce criminal violations of this Act; providing for the  
21 construction of this Act; defining certain terms; and generally relating to the  
22 Maryland Spam ~~Control~~ Deterrence Act.

23 BY adding to  
24 Article - Criminal Law  
25 Section 3-805.1  
26 Annotated Code of Maryland

1 (2002 Volume and 2003 Supplement)

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

4 **Article - Criminal Law**

5 3-805.1.

6 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

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

11 (I) A COMMERCIAL PRODUCT;

12 (II) A COMMERCIAL SERVICE;

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

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

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

19 (4) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON,  
20 INCLUDING AN INTERNET SERVICE PROVIDER, THAT IS AN INTERMEDIARY IN  
21 SENDING AND RECEIVING ELECTRONIC MAIL AND THAT PROVIDES TO THE PUBLIC  
22 THE ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL TO OR FROM AN ELECTRONIC  
23 MAIL ACCOUNT OR ONLINE USER ACCOUNT.

24 ~~(4)~~ (5) "FINANCIAL INSTITUTION" HAS THE SAME MEANING AS  
25 PROVIDED IN § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

26 ~~(5)~~ (6) "HEADER INFORMATION" MEANS THE SOURCE, DESTINATION,  
27 AND ROUTING INFORMATION ATTACHED TO AN ELECTRONIC MAIL MESSAGE,  
28 INCLUDING THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL  
29 ADDRESS, AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING  
30 OR PURPORTING TO IDENTIFY A PERSON INITIATING THE MESSAGE, AND TECHNICAL  
31 INFORMATION THAT AUTHENTICATES THE SENDER OF AN ELECTRONIC MAIL  
32 MESSAGE FOR NETWORK SECURITY OR NETWORK MANAGEMENT PURPOSES.

33 ~~(6)~~ ~~(4)~~ (7) THE TERM "INITIATE", WHEN USED WITH RESPECT TO A  
34 COMMERCIAL ELECTRONIC MAIL MESSAGE, MEANS TO ORIGINATE OR TRANSMIT  
35 THE MESSAGE OR TO PROCURE THE ORIGINATION OR TRANSMISSION OF THE

1 MESSAGE AND DOES NOT INCLUDE ACTIONS THAT CONSTITUTE ROUTINE  
2 CONVEYANCE OF SUCH MESSAGE.

3 ~~(H) THE TERM "INITIATE" DOES NOT INCLUDE THE ACTIONS OF AN~~  
4 ~~INTERNET SERVICE PROVIDER USED BY ANOTHER PERSON FOR THE TRANSMISSION,~~  
5 ~~ROUTING, RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC~~  
6 ~~TECHNICAL PROCESS OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER~~  
7 ~~PERSON HAS PROVIDED AND SELECTED THE RECIPIENT ELECTRONIC MAIL~~  
8 ~~ADDRESS.~~

9 ~~(7)~~ (8) "INTERNET" MEANS THE INTERNATIONAL COMPUTER  
10 NETWORK OF BOTH FEDERAL AND NONFEDERAL INTEROPERABLE PACKET  
11 SWITCHED DATA NETWORKS.

12 ~~(8)~~ (9) "INTERNET PROTOCOL ADDRESS" MEANS THE STRING OF  
13 NUMBERS BY WHICH A LOCATION ON THE INTERNET IS IDENTIFIED BY ROUTERS OR  
14 OTHER COMPUTERS CONNECTED TO THE INTERNET.

15 ~~(9)~~ ~~(H)~~ "INTERNET SERVICE PROVIDER" MEANS A SERVICE THAT  
16 ~~ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL, OR OTHER~~  
17 ~~SERVICES OFFERED OVER THE INTERNET THAT MAY INCLUDE ACCESS TO~~  
18 ~~PROPRIETARY CONTENT, INFORMATION, AND OTHER SERVICES AS PART OF A~~  
19 ~~PACKAGE OF SERVICES OFFERED TO SUBSCRIBERS.~~

20 ~~(H)~~ "INTERNET SERVICE PROVIDER" DOES NOT INCLUDE  
21 TELECOMMUNICATIONS SERVICES.

22 (10) "MATERIALLY FALSIFIED" MEANS ALTERED OR CONCEALED IN A  
23 MANNER THAT WOULD IMPAIR THE ABILITY OF ONE OF THE FOLLOWING TO  
24 IDENTIFY, LOCATE, OR RESPOND TO A PERSON WHO INITIATED AN ELECTRONIC  
25 MAIL MESSAGE OR TO INVESTIGATE AN ALLEGED VIOLATION OF THIS SECTION:

26 (I) A RECIPIENT OF THE MESSAGE;

27 (II) AN INTERNET ACCESS SERVICE PROCESSING THE MESSAGE ON  
28 BEHALF OF A RECIPIENT;

29 (III) A PERSON ALLEGING A VIOLATION OF THIS SECTION; OR

30 (IV) A LAW ENFORCEMENT AGENCY.

31 ~~(10)~~ (11) "MULTIPLE" MEANS:

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

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

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

3 ~~(H)~~ (12) "PROTECTED COMPUTER" MEANS A COMPUTER USED:

4 ~~(H)~~ (1) ~~EXCLUSIVELY BY STATE GOVERNMENT OR A FINANCIAL~~  
5 ~~INSTITUTION; OR~~

6 ~~(H)~~ (H) ~~BY OR FOR STATE GOVERNMENT OR A FINANCIAL~~  
7 ~~INSTITUTION; OR~~

8 ~~(H)~~ (H) IN INTRASTATE OR INTERSTATE COMMUNICATION.

9 (13) "ROUTINE CONVEYANCE" MEANS THE TRANSMISSION, ROUTING,  
10 RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC TECHNICAL  
11 PROCESS, OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER PERSON HAS  
12 IDENTIFIED THE RECIPIENTS OR PROVIDED THE RECIPIENTS' ADDRESSES.

13 (B) A PERSON MAY NOT CONSPIRE TO OR KNOWINGLY:

14 (1) USE A PROTECTED COMPUTER OF ANOTHER TO RELAY OR  
15 RETRANSMIT MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES WITH THE  
16 INTENT TO DECEIVE OR MISLEAD RECIPIENTS OR AN ~~INTERNET~~ ELECTRONIC MAIL  
17 SERVICE PROVIDER AS TO THE ORIGIN OF THE MESSAGE;

18 (2) MATERIALLY FALSIFY HEADER INFORMATION IN MULTIPLE  
19 COMMERCIAL ELECTRONIC MAIL MESSAGES AND INTENTIONALLY INITIATE THE  
20 TRANSMISSION OF THE MESSAGES;

21 (3) REGISTER, USING INFORMATION THAT MATERIALLY FALSIFIES THE  
22 IDENTITY OF THE ACTUAL REGISTRANT, FOR ~~FIVE~~ 15 OR MORE ELECTRONIC MAIL  
23 ACCOUNTS OR ON-LINE USER ACCOUNTS OR TWO OR MORE DOMAIN NAMES AND  
24 INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE COMMERCIAL  
25 ELECTRONIC MAIL MESSAGES FROM ONE OR ANY COMBINATION OF ACCOUNTS OR  
26 DOMAIN NAMES; ~~OR~~

27 (4) ~~CONSPIRE TO OR~~ FALSELY REPRESENT THE RIGHT TO USE FIVE OR  
28 MORE INTERNET PROTOCOL ADDRESSES AND INTENTIONALLY INITIATE THE  
29 TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM  
30 THE INTERNET PROTOCOL ADDRESSES;

31 (5) ACCESS A PROTECTED COMPUTER OF ANOTHER WITHOUT  
32 AUTHORIZATION, AND INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE  
33 ELECTRONIC MAIL ADVERTISEMENTS FROM OR THROUGH THE PROTECTED  
34 COMPUTER;

35 (6) VIOLATE ITEM (1), (2), (3), (4), OR (5) OF THIS SUBSECTION BY  
36 PROVIDING OR SELECTING ADDRESSES TO WHICH A MESSAGE WAS TRANSMITTED,  
37 KNOWING THAT:

1                   (I)     THE ELECTRONIC MAIL ADDRESSES OF THE RECIPIENTS WERE  
2 OBTAINED USING AN AUTOMATED MEANS FROM AN INTERNET WEBSITE OR  
3 PROPRIETARY ONLINE SERVICE OPERATED BY ANOTHER PERSON; AND

4                   (II)    THE WEBSITE OR ONLINE SERVICE INCLUDED, AT THE TIME  
5 THE ADDRESSES WERE OBTAINED, A NOTICE STATING THAT THE OPERATOR OF THE  
6 WEBSITE OR ONLINE SERVICE WILL NOT TRANSFER ADDRESSES MAINTAINED BY  
7 THE WEBSITE OR ONLINE SERVICE TO ANY OTHER PARTY FOR THE PURPOSES OF  
8 INITIATING OR ENABLING OTHERS TO INITIATE ELECTRONIC MAIL MESSAGES; OR

9                   (7)     VIOLATE ITEM (1), (2), (3), (4), OR (5) OF THIS SUBSECTION BY  
10 PROVIDING OR SELECTING ELECTRONIC MAIL ADDRESSES OF RECIPIENTS  
11 OBTAINED USING AN AUTOMATED MEANS THAT GENERATES POSSIBLE ELECTRONIC  
12 MAIL ADDRESSES BY COMBINING NAMES, LETTERS, OR NUMBERS INTO NUMEROUS  
13 PERMUTATIONS.

14           (C)     (1)     A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),  
15 (4), OR (5) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS  
16 SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING  
17 \$5,000 OR BOTH;\_

18                   (2)     A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),  
19 (4), OR (5) OF THIS SECTION INVOLVING THE TRANSMISSION OF MORE THAN 250  
20 COMMERCIAL ELECTRONIC MAIL MESSAGES DURING A 24-HOUR PERIOD, 2,500  
21 COMMERCIAL ELECTRONIC MAIL MESSAGES DURING ANY 30-DAY PERIOD, OR 25,000  
22 COMMERCIAL ELECTRONIC MAIL MESSAGES DURING ANY 1-YEAR PERIOD IS GUILTY  
23 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT  
24 EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH;\_

25                   (3)     A PERSON WHO VIOLATES SUBSECTION (B)(3) OR (B)(4) OF THIS  
26 SECTION INVOLVING 20 OR MORE ELECTRONIC MAIL ACCOUNTS OR 10 OR MORE  
27 DOMAIN NAMES AND INTENTIONALLY INITIATES THE TRANSMISSION OF MULTIPLE  
28 COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THE ACCOUNTS OR USING THE  
29 DOMAIN NAMES IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO  
30 IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR  
31 BOTH;\_

32                   (4)     A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),  
33 (4), OR (5) OF THIS SECTION THAT CAUSES A LOSS OF \$500 OR MORE DURING ANY  
34 1-YEAR PERIOD IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO  
35 IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR  
36 BOTH;\_

37                   (5)     A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),  
38 (4), OR (5) OF THIS SECTION IN CONCERT WITH THREE OR MORE OTHER PERSONS AS  
39 THE LEADER OR ORGANIZER OF THE ACTION THAT CONSTITUTES THE VIOLATION IS  
40 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT  
41 NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH; ~~AND~~\_

1 (6) A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),  
2 (4), OR (5) OF THIS SECTION IN FURTHERANCE OF A FELONY, OR WHO HAS  
3 PREVIOUSLY BEEN CONVICTED OF AN OFFENSE UNDER THE LAWS OF THIS STATE,  
4 ANOTHER STATE, OR UNDER ANY FEDERAL LAW INVOLVING THE TRANSMISSION OF  
5 MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES IS GUILTY OF A FELONY AND  
6 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A  
7 FINE NOT EXCEEDING \$25,000 OR BOTH.

8 (7) A PERSON WHO VIOLATES SUBSECTION (B)(6) OR (7) OF THIS SECTION  
9 IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT  
10 NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$5,000 OR BOTH.

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

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

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

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

22 (2) THE ATTORNEY GENERAL MAY INSTITUTE A CIVIL ACTION AGAINST  
23 A PERSON WHO VIOLATES THIS SECTION TO RECOVER ~~FOR THE STATE~~ A CIVIL  
24 PENALTY NOT EXCEEDING:

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

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

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

31 (4) THE ATTORNEY GENERAL MAY ENFORCE CRIMINAL VIOLATIONS OF  
32 THIS SECTION.

33 (F) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO HAVE ANY EFFECT  
34 ON THE LAWFULNESS OF THE ADOPTION, IMPLEMENTATION, OR ENFORCEMENT BY  
35 AN ELECTRONIC MAIL SERVICE PROVIDER OF A POLICY OF DECLINING TO TRANSMIT,  
36 ROUTE, RELAY, HANDLE, OR STORE CERTAIN TYPES OF ELECTRONIC MAIL MESSAGES  
37 UNDER ANY OTHER PROVISION OF LAW.

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