

SENATE BILL 604

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2004 Regular Session
4r1380
CF 4r1700

By: **Senators Garagiola, Brochin, Forehand, Giannetti, Haines, Harris,
Hughes, Jacobs, Jimeno, Klausmeier, and Middleton**

Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 23, 2004

CHAPTER _____

1 AN ACT concerning

2 **Maryland Spam ~~Control~~ Deterrent 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 ~~felonies~~; misdemeanors; prohibiting the
13 provision or selection of certain electronic mail addresses under certain
14 circumstances; providing for certain penalties and fines for certain violations of
15 this Act under certain circumstances; providing for additional penalties and
16 fines under certain circumstances; authorizing the forfeiture of certain moneys,
17 income, and property under certain circumstances; authorizing the Attorney
18 General to institute a civil action under certain circumstances; providing for a
19 civil penalty; authorizing certain injunctive relief under certain circumstances;
20 authorizing the Attorney General to enforce criminal violations of this Act in
21 circuit court or the District Court; providing for the construction of this Act;
22 defining certain terms; and generally relating to the Maryland Spam ~~Control~~
23 Deterrent Act.

24 BY adding to
25 Article - Criminal Law
26 Section 3-805.1

1 Annotated Code of Maryland
2 (2002 Volume and 2003 Supplement)

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

5 **Article - Criminal Law**

6 3-805.1.

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

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

12 (I) A COMMERCIAL PRODUCT;

13 (II) A COMMERCIAL SERVICE;

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

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

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

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

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

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

34 ~~(6)~~ ~~(4)~~ (7) THE TERM "INITIATE", WHEN USED WITH RESPECT TO A
35 COMMERCIAL ELECTRONIC MAIL MESSAGE, MEANS TO ORIGINATE OR TRANSMIT
36 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)~~ ~~(I)~~ "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) "MULTIPLE" MEANS:

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

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

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

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

30 ~~(I) EXCLUSIVELY BY STATE GOVERNMENT OR A FINANCIAL~~
31 ~~INSTITUTION; OR~~

32 ~~(II) BY OR FOR STATE GOVERNMENT OR A FINANCIAL~~
33 ~~INSTITUTION; OR~~

34 ~~(III)~~ IN INTRASTATE OR INTERSTATE COMMUNICATION.

35 (12) "ROUTINE CONVEYANCE" MEANS THE TRANSMISSION, ROUTING,
36 RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC TECHNICAL

1 PROCESS, OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER PERSON HAS
2 IDENTIFIED THE RECIPIENTS OR PROVIDED THE RECIPIENT ADDRESSES.

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

4 (1) USE A PROTECTED COMPUTER TO RELAY OR RETRANSMIT MULTIPLE
5 COMMERCIAL ELECTRONIC MAIL MESSAGES WITH THE INTENT TO DECEIVE OR
6 MISLEAD RECIPIENTS OR AN ~~INTERNET~~ ELECTRONIC MAIL SERVICE PROVIDER AS TO
7 THE ORIGIN OF THE MESSAGE;

8 (2) MATERIALLY FALSIFY HEADER INFORMATION IN MULTIPLE
9 COMMERCIAL ELECTRONIC MAIL MESSAGES AND INTENTIONALLY INITIATE THE
10 TRANSMISSION OF THE MESSAGES;

11 (3) REGISTER, USING INFORMATION THAT MATERIALLY FALSIFIES THE
12 IDENTITY OF THE ACTUAL REGISTRANT, FOR FIVE OR MORE ELECTRONIC MAIL
13 ACCOUNTS OR ON-LINE USER ACCOUNTS OR TWO OR MORE DOMAIN NAMES AND
14 INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE COMMERCIAL
15 ELECTRONIC MAIL MESSAGES FROM ONE OR ANY COMBINATION OF ACCOUNTS OR
16 DOMAIN NAMES; OR

17 (4) ~~CONSPIRE TO OR~~ FALSELY REPRESENT THE RIGHT TO USE FIVE OR
18 MORE INTERNET PROTOCOL ADDRESSES AND INTENTIONALLY INITIATE THE
19 TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM
20 THE INTERNET PROTOCOL ADDRESSES;

21 (5) ACCESS A PROTECTED COMPUTER WITHOUT AUTHORIZATION, AND
22 INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE ELECTRONIC MAIL
23 ADVERTISEMENTS FROM OR THROUGH THE PROTECTED COMPUTER;

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

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

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

35 (7) VIOLATE ITEM (1), (2), (3), (4), OR (5) OF THIS SUBSECTION BY
36 PROVIDING OR SELECTING ELECTRONIC MAIL ADDRESSES OF RECIPIENTS
37 OBTAINED USING AN AUTOMATED MEANS THAT GENERATES POSSIBLE ELECTRONIC
38 MAIL ADDRESSES BY COMBINING NAMES, LETTERS, OR NUMBERS INTO NUMEROUS
39 PERMUTATIONS.

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

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

12 (3) A PERSON WHO VIOLATES SUBSECTION (B)(3) OF THIS SECTION
13 INVOLVING 20 OR MORE ELECTRONIC MAIL ACCOUNTS OR 10 OR MORE DOMAIN
14 NAMES AND INTENTIONALLY INITIATES THE TRANSMISSION OF MULTIPLE
15 COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THE ACCOUNTS OR USING THE
16 DOMAIN NAMES IS GUILTY OF A ~~FELONY~~ MISDEMEANOR AND ON CONVICTION IS
17 SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING
18 \$10,000 OR BOTH;

19 (4) A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),
20 (4), OR (5) OF THIS SECTION THAT CAUSES A LOSS OF \$500 OR MORE DURING ANY
21 1-YEAR PERIOD IS GUILTY OF A ~~FELONY~~ MISDEMEANOR AND ON CONVICTION IS
22 SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING
23 \$10,000 OR BOTH;

24 (5) A PERSON WHO VIOLATES ~~SUBSECTION (B)~~ SUBSECTION (B)(1), (2), (3),
25 (4), OR (5) OF THIS SECTION IN CONCERT WITH THREE OR MORE OTHER PERSONS AS
26 THE LEADER OR ORGANIZER OF THE ACTION THAT CONSTITUTES THE VIOLATION IS
27 GUILTY OF A ~~FELONY~~ MISDEMEANOR AND ON CONVICTION IS SUBJECT TO
28 IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR
29 BOTH; ~~AND~~.

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

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

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

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

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

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

9 (2) THE ATTORNEY GENERAL MAY INSTITUTE A CIVIL ACTION IN A
10 CIRCUIT COURT OR THE DISTRICT COURT AGAINST A PERSON WHO VIOLATES THIS
11 SECTION TO RECOVER FOR THE STATE A CIVIL PENALTY NOT EXCEEDING:

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

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

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

18 (4) THE ATTORNEY GENERAL MAY ENFORCE CRIMINAL VIOLATIONS OF
19 THIS SECTION IN A CIRCUIT COURT OR DISTRICT COURT.

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

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