

SENATE BILL No. 357

April 1, 2003, Introduced by Senators BISHOP, SANBORN, TOY, GOSCHKA, JOHNSON, BASHAM, KUIPERS, CROPSEY, HARDIMAN, JELINEK, BROWN, McMANUS, BIRKHOLZ, GILBERT, STAMAS, VAN WOERKOM, CASSIS, GARCIA, THOMAS, ALLEN and GEORGE and referred to the Committee on Technology and Energy.

A bill to require certain restrictions on the transmission of unsolicited commercial and sexually explicit e-mail; to establish procedures for e-mail service providers; to allow recipients of e-mail to be excluded from receiving future e-mail; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "unsolicited commercial and sexually explicit e-mail act".

3 Sec. 2. As used in this act:

4 (a) "Commercial" means for the purpose of promoting the sale,
5 lease, or exchange of goods, services, or real property.

6 (b) "Computer network" means 2 or more computers that are
7 interconnected to exchange electronic messages, files, data, or
8 other information.

9 (c) "E-mail" means an electronic message, file, data, or

1 other information that is transmitted between 2 or more
2 computers, computer networks, or electronic terminals or within a
3 computer network.

4 (d) "E-mail address" means a destination, commonly expressed
5 as a string of characters, to which e-mail may be sent or
6 delivered.

7 (e) "E-mail service provider" means a person that is an
8 intermediary in the transmission of e-mail from the sender to the
9 recipient or provides to end users of e-mail service the ability
10 to send and receive e-mail.

11 (f) "Internet domain name" means a globally unique,
12 hierarchical reference to an internet host or service, assigned
13 through centralized internet authorities, comprising a series of
14 character strings separated by periods, with the right-most
15 string specifying the top of the hierarchy.

16 (g) "Originating address" means the string of characters used
17 to specify the source of any e-mail message.

18 (h) "Person" means an individual, corporation, partnership,
19 association, governmental entity, or any other legal entity.

20 (i) "Preexisting business relationship" means that there was
21 a business transaction between the initiator and the recipient of
22 a commercial e-mail message during the 5-year period preceding
23 the receipt of that message. A preexisting business relationship
24 includes a transaction involving the free provision of
25 information, goods, or services requested by the recipient. A
26 preexisting business relationship does not exist after a
27 recipient requests to be removed from the distribution lists of

1 an initiator under this act and a reasonable amount of time has
2 expired since that request.

3 (j) "Receiving address" means the string of characters used
4 to specify a recipient with each receiving address creating a
5 unique and separate recipient.

6 (k) "Recipient" means a person who receives an e-mail
7 advertisement at any 1 of the following receiving addresses:

8 (i) A receiving address furnished by an e-mail service
9 provider that bills for furnishing and maintaining that receiving
10 address to a mailing address within this state.

11 (ii) A receiving address ordinarily accessed from a computer
12 located within this state.

13 (iii) A receiving address ordinarily accessed by a person
14 domiciled within this state.

15 (iv) Any other receiving address with respect to which the
16 obligations imposed by this section can be imposed consistent
17 with the United States constitution.

18 (l) "Sexually explicit e-mail" means an e-mail that contains
19 or promotes an electronic link to material that is harmful to
20 minors. An e-mail is a sexually explicit e-mail if it meets the
21 definition of this subdivision, even if the e-mail also meets the
22 definition of a commercial e-mail.

23 (m) "Unsolicited" means without the recipient's express
24 permission. An e-mail is not unsolicited if the sender has a
25 preexisting business or personal relationship with the
26 recipient.

27 Sec. 3. (1) A person who sends or causes to be sent an

1 unsolicited commercial e-mail or an unsolicited sexually explicit
2 e-mail through the intermediary of an e-mail service provider
3 located in this state or to an e-mail address held by a resident
4 of this state shall do all of the following:

5 (a) Conspicuously state in the e-mail all of the following:

6 (i) The sender's legal name.

7 (ii) The sender's correct street address.

8 (iii) The sender's valid internet domain name.

9 (b) Include in the e-mail a subject line that contains 1 of
10 the following:

11 (i) For a commercial e-mail, "ADV:" as the first 4
12 characters.

13 (ii) For a sexually explicit e-mail, "ADV:ADULT" as the first
14 9 characters.

15 (c) Provide the recipient a convenient, no-cost mechanism to
16 notify the sender not to send any future e-mail to the
17 recipient.

18 (d) Conspicuously provide in the text of the e-mail a notice
19 that states the following:

20 (i) A functioning return electronic address.

21 (ii) Informs the recipient that the recipient may
22 conveniently and at no cost be excluded from future commercial or
23 sexually explicit e-mail from the sender.

24 (iii) For a sexually explicit e-mail, the sender's toll-free
25 telephone number that the recipient may call to be excluded from
26 future e-mail from the sender.

27 (2) A person who sends or causes to be sent an unsolicited

1 commercial e-mail or an unsolicited sexually explicit e-mail
2 through the intermediary of an e-mail service provider located in
3 this state or to an e-mail address held by a resident of this
4 state shall not do any of the following:

5 (a) Use a third party's internet domain name in identifying
6 the point of origin or in stating the transmission path of the
7 e-mail without the third party's consent.

8 (b) Misrepresent any information in identifying the point of
9 origin or the transmission path of the e-mail.

10 (c) Fail to include in the e-mail the information necessary
11 to identify the point of origin of the e-mail.

12 (d) Have a false or misleading subject line.

13 (3) If the recipient of an unsolicited commercial e-mail or
14 an unsolicited sexually explicit e-mail notifies the sender that
15 the recipient does not want to receive future commercial e-mail
16 or future sexually explicit e-mail from the sender, the sender
17 shall not send that recipient a commercial e-mail or a sexually
18 explicit e-mail either directly or through a subsidiary or
19 affiliate.

20 Sec. 4. (1) A person shall not use a computer, a computer
21 network, or the computer services of an e-mail service provider
22 to transmit a commercial e-mail or sexually explicit e-mail in
23 contravention of the authority granted by, or in violation of the
24 policies related to e-mail set by, the e-mail service provider if
25 the e-mail service provider has provided the person notice of
26 those policies.

27 (2) Notice of those policies is considered sufficient if an

1 e-mail service provider maintains an easily accessible web page
2 containing its policies regarding a commercial e-mail or sexually
3 explicit e-mail and can demonstrate that notice was supplied via
4 electronic means between the sending and receiving computers.

5 Sec. 5. A person shall not knowingly sell, give, or
6 otherwise distribute or possess with the intent to sell, give, or
7 distribute software that does any of the following:

8 (a) Is primarily designed or produced for the purpose of
9 facilitating or enabling the falsification of e-mail transmission
10 information or other routing information.

11 (b) Has only limited commercially significant purpose or use
12 other than to facilitate or enable the falsification of e-mail
13 transmission information or other routing information.

14 (c) Is marketed by that person or another acting in concert
15 with that person with that person's knowledge for use in
16 facilitating or enabling the falsification of e-mail transmission
17 information or other routing information.

18 Sec. 6. (1) A person who violates this act is guilty of a
19 misdemeanor punishable by imprisonment for not more than 1 year
20 or a fine of not more than \$5,000.00, or both. Each e-mail sent
21 in violation of this act is a separate violation under this
22 section.

23 (2) An e-mail service provider does not violate this act
24 solely by being an intermediary between the sender and recipient
25 in the transmission of an e-mail that violates this act.

26 (3) A violation of this act by an employee does not subject
27 the employee's employer to liability under this section if the

1 employee's violation of the act is also a violation of an
2 established policy of the employer that requires compliance with
3 this act.

4 (4) It is a defense to an action brought under this section
5 or section 7 that the unsolicited commercial e-mail or
6 unsolicited sexually explicit e-mail was transmitted
7 accidentally. The burden of proving that the e-mail was
8 transmitted accidentally is on the sender.

9 Sec. 7. (1) An action may be brought by a person who
10 received an unsolicited commercial e-mail or unsolicited sexually
11 explicit e-mail in violation of this act.

12 (2) An action may be brought by an e-mail service provider
13 through whose facilities the unsolicited commercial e-mail or
14 unsolicited sexually explicit e-mail was transmitted in violation
15 of this act.

16 (3) In each action brought under this section, a recipient or
17 e-mail service provider may recover 1 of the following:

18 (a) Actual damages.

19 (b) In lieu of actual damages, recover the lesser of the
20 following:

21 (i) \$10.00 per unsolicited commercial e-mail or unsolicited
22 sexually explicit e-mail received by the recipient or transmitted
23 through the e-mail service provider.

24 (ii) \$25,000.00 for each day that the violation occurs.

25 (4) The recipient or e-mail service provider shall be awarded
26 actual costs and reasonable attorney fees.