

SENATE BILL 604

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2004 Regular Session
(4lr1380)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senators Garagiola, Brochin, Forehand, Giannetti, Haines,
Harris, Hughes, Jacobs, Jimeno, Klausmeier, and Middleton**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Spam Control ~~Deterrent~~ 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 ~~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,

1 income, and property under certain circumstances; authorizing the Attorney
 2 General to institute a civil action under certain circumstances; providing for a
 3 civil penalty; authorizing certain injunctive relief under certain circumstances;
 4 authorizing the Attorney General to enforce criminal violations of this Act in
 5 circuit court or the District Court; providing for the construction of this Act;
 6 defining certain terms; and generally relating to the Maryland Spam Control
 7 Deterrent Deterrence Act.

8 BY adding to
 9 Article - Criminal Law
 10 Section 3-805.1
 11 Annotated Code of Maryland
 12 (2002 Volume and 2003 Supplement)

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

15 **Article - Criminal Law**

16 3-805.1.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 18 INDICATED.

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

- 22 (I) A COMMERCIAL PRODUCT;
- 23 (II) A COMMERCIAL SERVICE;
- 24 (III) THE CONTENT ON AN INTERNET WEBSITE; OR
- 25 (IV) A WEBSITE OPERATED FOR A COMMERCIAL PURPOSE.

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

30 (4) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON,
 31 INCLUDING AN INTERNET SERVICE PROVIDER, THAT IS AN INTERMEDIARY IN
 32 SENDING AND RECEIVING ELECTRONIC MAIL AND THAT PROVIDES TO THE PUBLIC
 33 THE ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL TO OR FROM AN ELECTRONIC
 34 MAIL ACCOUNT OR ONLINE USER ACCOUNT.

35 (4) (5) "FINANCIAL INSTITUTION" HAS THE SAME MEANING AS
 36 PROVIDED IN § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

1 (5) (6) "HEADER INFORMATION" MEANS THE SOURCE, DESTINATION,
 2 AND ROUTING INFORMATION ATTACHED TO AN ELECTRONIC MAIL MESSAGE,
 3 INCLUDING THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL
 4 ADDRESS, AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING
 5 OR PURPORTING TO IDENTIFY A PERSON INITIATING THE MESSAGE, AND TECHNICAL
 6 INFORMATION THAT AUTHENTICATES THE SENDER OF AN ELECTRONIC MAIL
 7 MESSAGE FOR NETWORK SECURITY OR NETWORK MANAGEMENT PURPOSES.

8 (6) (4) (7) THE TERM "INITIATE", WHEN USED WITH RESPECT TO A
 9 COMMERCIAL ELECTRONIC MAIL MESSAGE, MEANS TO ORIGINATE OR TRANSMIT
 10 THE MESSAGE OR TO PROCURE THE ORIGINATION OR TRANSMISSION OF THE
 11 MESSAGE AND DOES NOT INCLUDE ACTIONS THAT CONSTITUTE ROUTINE
 12 CONVEYANCE OF SUCH MESSAGE.

13 (H) ~~THE TERM "INITIATE" DOES NOT INCLUDE THE ACTIONS OF AN~~
 14 ~~INTERNET SERVICE PROVIDER USED BY ANOTHER PERSON FOR THE TRANSMISSION,~~
 15 ~~ROUTING, RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC~~
 16 ~~TECHNICAL PROCESS OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER~~
 17 ~~PERSON HAS PROVIDED AND SELECTED THE RECIPIENT ELECTRONIC MAIL~~
 18 ~~ADDRESS.~~

19 (7) (8) "INTERNET" MEANS THE INTERNATIONAL COMPUTER
 20 NETWORK OF BOTH FEDERAL AND NONFEDERAL INTEROPERABLE PACKET
 21 SWITCHED DATA NETWORKS.

22 (8) (9) "INTERNET PROTOCOL ADDRESS" MEANS THE STRING OF
 23 NUMBERS BY WHICH A LOCATION ON THE INTERNET IS IDENTIFIED BY ROUTERS OR
 24 OTHER COMPUTERS CONNECTED TO THE INTERNET.

25 (9) (4) ~~"INTERNET SERVICE PROVIDER" MEANS A SERVICE THAT~~
 26 ~~ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL, OR OTHER~~
 27 ~~SERVICES OFFERED OVER THE INTERNET THAT MAY INCLUDE ACCESS TO~~
 28 ~~PROPRIETARY CONTENT, INFORMATION, AND OTHER SERVICES AS PART OF A~~
 29 ~~PACKAGE OF SERVICES OFFERED TO SUBSCRIBERS.~~

30 (H) ~~"INTERNET SERVICE PROVIDER" DOES NOT INCLUDE~~
 31 ~~TELECOMMUNICATIONS SERVICES.~~

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

36 (I) A RECIPIENT OF THE MESSAGE;

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

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

1 (IV) A LAW ENFORCEMENT AGENCY.

2 (10) (11) "MULTIPLE" MEANS:

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

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

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

9 (14) (12) "PROTECTED COMPUTER" MEANS A COMPUTER USED:

10 (H) ~~EXCLUSIVELY BY STATE GOVERNMENT OR A FINANCIAL~~
11 ~~INSTITUTION; OR~~

12 (H) ~~BY OR FOR STATE GOVERNMENT OR A FINANCIAL~~
13 ~~INSTITUTION; OR~~

14 (HH) IN INTRASTATE OR INTERSTATE COMMUNICATION.

15 (12) (13) "ROUTINE CONVEYANCE" MEANS THE TRANSMISSION,
16 ROUTING, RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC
17 TECHNICAL PROCESS, OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER
18 PERSON HAS IDENTIFIED THE RECIPIENTS OR PROVIDED THE RECIPIENT
19 ADDRESSES.

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

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

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

28 (3) REGISTER, USING INFORMATION THAT MATERIALLY FALSIFIES THE
29 IDENTITY OF THE ACTUAL REGISTRANT, FOR ~~FIVE~~ 15 OR MORE ELECTRONIC MAIL
30 ACCOUNTS OR ON-LINE USER ACCOUNTS OR TWO OR MORE DOMAIN NAMES AND
31 INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE COMMERCIAL
32 ELECTRONIC MAIL MESSAGES FROM ONE OR ANY COMBINATION OF ACCOUNTS OR
33 DOMAIN NAMES; ~~OR~~

34 (4) ~~CONSPIRE TO OR~~ FALSELY REPRESENT THE RIGHT TO USE FIVE OR
35 MORE INTERNET PROTOCOL ADDRESSES AND INTENTIONALLY INITIATE THE

1 TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM
2 THE INTERNET PROTOCOL ADDRESSES;

3 (5) ACCESS A PROTECTED COMPUTER OF ANOTHER WITHOUT
4 AUTHORIZATION, AND INTENTIONALLY INITIATE THE TRANSMISSION OF MULTIPLE
5 ELECTRONIC MAIL ADVERTISEMENTS FROM OR THROUGH THE PROTECTED
6 COMPUTER;

7 (6) VIOLATE ITEM (1), (2), (3), (4), OR (5) OF THIS SUBSECTION BY
8 PROVIDING OR SELECTING ADDRESSES TO WHICH A MESSAGE WAS TRANSMITTED,
9 KNOWING THAT;

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

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

18 (7) VIOLATE ITEM (1), (2), (3), (4), OR (5) OF THIS SUBSECTION BY
19 PROVIDING OR SELECTING ELECTRONIC MAIL ADDRESSES OF RECIPIENTS
20 OBTAINED USING AN AUTOMATED MEANS THAT GENERATES POSSIBLE ELECTRONIC
21 MAIL ADDRESSES BY COMBINING NAMES, LETTERS, OR NUMBERS INTO NUMEROUS
22 PERMUTATIONS.

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

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

34 (3) A PERSON WHO VIOLATES SUBSECTION (B)(3) OF THIS SECTION
35 INVOLVING 20 OR MORE ELECTRONIC MAIL ACCOUNTS OR 10 OR MORE DOMAIN
36 NAMES AND INTENTIONALLY INITIATES THE TRANSMISSION OF MULTIPLE
37 COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THE ACCOUNTS OR USING THE
38 DOMAIN NAMES IS GUILTY OF A ~~FELONY~~ MISDEMEANOR AND ON CONVICTION IS
39 SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING
40 \$10,000 OR BOTH;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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