

HOUSE No. 4312

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 17, 2003.

The committee on Science & Technology, to whom was referred the Bill regulating commercial electronic mail (Senate No. 2019, amended), reports recommending that the same ought to pass, with an amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4312.

For the committee,

BRIAN S. DEMPSEY.

Text of amendment recommended by the committee on Science and Technology to the Senate Bill regulating commercial electronic mail (Senate, No. 2019, amended), November 17, 2003.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

Striking out all after the enacting clause and inserting in place thereof the following:

1 “The General Laws, as appearing in the 2002 Official Edition,
2 are hereby amended by adding the following new
3 Chapter 159D:—

4 Section 1. The definitions in this section apply throughout this
5 chapter unless the context clearly requires otherwise.

6 (1) “Current or prior business relationship” means a voluntary
7 relationship between two parties based on:

8 (a) The recipient’s purchase, rental, use, or lease of that
9 sender’s goods or services or a financial transaction between the
10 recipient and sender; or

11 (b) The recipient’s inquiry or application to that sender, with or
12 without an exchange of consideration; or

13 (c) The recipient’s express consent to receive commercial elec-
14 tronic messages from that sender.

15 (2) “Electronic mail address” means a destination, commonly
16 expressed as a string of characters, consisting of a unique user
17 name or mailbox and a reference to an Internet domain, whether
18 or not displayed, to which electronic mail messages may be sent
19 or delivered.

20 (3) “Electronic mail message” means an electronic message
21 that is transmitted to an electronic mail address.

22 (4) “Electronic mail service provider” means any person, busi-
23 ness, organization, or entity that provides users the ability to send
24 or receive electronic mail via the Internet.

25 (5) “Initiate” means the initial transmission by the original
26 sender of an electronic mail message. It does not refer to the

27 action by an intervening electronic mail service provider that may
28 facilitate the transmission of the message. For purposes of this
29 paragraph, more than one person may be considered to have initi-
30 ated a message.

31 (6) "Recipient" means an authorized user of the electronic mail
32 address to which an electronic mail message was sent. If a recip-
33 ient of an electronic mail message has one or more electronic mail
34 address in addition to the address to which the message was sent,
35 the recipient shall be treated as a separate recipient with respect to
36 each such address.

37 (7) "Sender" means a person who initiates an electronic mail
38 message.

39 (8) "Person" means a natural person, corporation, trust, partner-
40 ship (incorporated or unincorporated), association, or any other
41 business or legal entity.

42 (9) "Unsolicited commercial electronic mail message" means
43 an electronic mail message sent for the primary purpose of pro-
44 moting the lease, sale, rental, gift, offer, or other disposition of
45 any real property, goods, services, including the extension of
46 credit to a recipient with whom that sender does not have a current
47 or prior business relationship. It does not mean an electronic mail
48 message initiated by an electronic mail service provider that is
49 sent to its electronic mail account holders. Unsolicited commer-
50 cial electronic mail message" does not apply to situations where
51 the person initiating the message:

52 (a) Is an organization using electronic mail to communicate
53 exclusively with its members; or

54 (b) Is an organization using electronic mail to communicate
55 exclusively with its employees or contractors, or both, or

56 (c) Is, or is sending the message on behalf of, a charitable orga-
57 nization or entity, including a public charity; or

58 (d) Has an ongoing contract or agreement with the recipient of
59 the commercial electronic mail message, and the message from
60 the sender directly concerns the ongoing contract or agreement; or

61 (e) Has a current or prior business relationship with recipient,
62 as defined in this section; or

63 (f) Has the express consent of the recipient.

64 Section 2.

65 (1) It shall be a violation of this section for any person who ini-
66 tiates any unsolicited commercial electronic mail message to fail

67 to clearly and conspicuously disclose within such message a valid
68 sender-operated return electronic mail address or functioning
69 hyperlink, which the recipient may use to contact the sender to
70 request that the sender not initiate or assist the transmission of any
71 further unsolicited commercial electronic mail messages to the
72 recipient. Such messages must include a clear and conspicuous
73 notice to the recipient that the recipient can utilize to request not
74 to receive any further unsolicited commercial electronic messages
75 from that sender. It shall be a violation of this section for a person
76 to initiate any unsolicited commercial electronic mail message to
77 any recipient that has requested under this subsection not to
78 receive any further unsolicited commercial electronic mail mes-
79 sages from that sender. It shall further be a violation of this
80 section for a person to use or allow others to use any information
81 received from a recipient requesting to not receive further unso-
82 licited commercial electronic mail messages, except to facilitate
83 such request.

84 (2) It shall be a violation of this section for any person that ini-
85 tiates an unsolicited commercial electronic mail message to:

86 (a) Fail to disclose the actual point-of-origin electronic mail
87 address of the unsolicited commercial electronic message;

88 (b) Falsify electronic mail transmission information or other
89 routing information for the unsolicited commercial electronic mail
90 message;

91 (c) Use a third party's internet address or domain name without
92 the third party's consent for the purposes of transmitting elec-
93 tronic mail;

94 (d) Include any false or misleading information in the subject
95 line or text of such a message;

96 (e) Fail to use the exact characters "ADV:" (the capital letters
97 "A", "D" and "V", in that order, followed immediately by a colon)
98 as the first four characters in the subject line of an unsolicited
99 commercial electronic mail message;

100 (f) Fail to include the legal name and address of the person ini-
101 tiating the unsolicited commercial electronic mail message.

102 (3) It shall also be a violation of this section for a person that
103 initiates an unsolicited commercial electronic mail message that
104 advertises the lease, sale, rental, gift, offer, or other disposition of

105 any realty, goods, services, including the extension of credit, that
106 may only be viewed, purchased, rented, leased, or held in posses-
107 sion by an individual eighteen years of age or older in accordance
108 with Massachusetts law, including but not limited to content of a
109 sexual, sexually explicit or otherwise adult-oriented nature, to fail
110 to use the exact characters “ADV:ADLT” (the capital letters “A”,
111 “D”, and “V”, in that order, followed immediately by a colon, fol-
112 lowed immediately by the capital letters “A”, “D”, “L”, and “T”,
113 in that order) as the first eight characters in the subject line of the
114 unsolicited commercial electronic mail message.

115 (4) A person who initiates a commercial electronic mail mes-
116 sage to a recipient with whom they have a current or prior busi-
117 ness relationship as defined in Section 1(1) shall clearly and
118 conspicuously disclose within such message a valid sender-oper-
119 ated return electronic mail address or functioning hyperlink,
120 which the recipient may use to contact the sender to request that
121 the sender not initiate or assist the transmission of any further
122 electronic mail messages to the recipient. Such messages must
123 include a clear and conspicuous notice to the recipient that the
124 recipient can utilize to request not to receive any further electronic
125 messages from that sender. It shall be a violation of this section
126 for a person to initiate any unsolicited commercial electronic mail
127 message to any recipient that has requested under this subsection
128 not to receive any further electronic mail messages from the
129 sender. It shall further be a violation of this section for a person to
130 use or allow others to use any information received from a recip-
131 ient requesting to not receive further electronic mail messages,
132 except to facilitate such request.

133 Section 3.

134 (1) In addition to the remedies provided below, violations of
135 Section 2 of this Act shall constitute unfair or deceptive acts or
136 practices under G.L. c. 93A, Section 2(a).

137 (2) Damages to the recipient of a commercial electronic mail
138 message sent in violation of Section 2 of this Act are up to five
139 hundred dollars per message, in addition to reasonable attorney’s
140 fees and costs.

141 (3) Damages to an electronic mail service provider resulting
142 from a message sent in violation of Section 2 of this Act are the

143 actual damages, or the greater of ten dollars per message or
144 \$25,000 for each day the unlawful message is received, in addi-
145 tion to reasonable attorney's fees and costs.

146 (4) The provisions of this section shall not be construed to limit
147 any person's right to pursue any additional civil remedy otherwise
148 allowable by law.

149 (5) The injured person shall not have a cause of action against
150 the electronic mail service provider that facilitates the transmis-
151 sion of the unsolicited commercial electronic mail message over
152 its computer network.

153 (6) At the request of any party to an action brought pursuant to
154 this section, the court may, in its discretion, conduct all legal pro-
155 ceedings in such a way as to protect the secrecy and security of
156 the computer, computer network, computer data, computer pro-
157 gram, and computer software involved in order to prevent possible
158 recurrence of the same or similar act by another person and to pro-
159 tect any trade secrets of any party.

160 (7) It shall be a defense to any action against any person under
161 this act if:

162 (a) Such person has established and implemented, with due
163 care, reasonable practices and procedures to effectively prevent
164 violations of this act; and

165 (b) Any violation occurred despite good faith efforts to main-
166 tain compliance with such practices and procedures.

167 Section 4.

168 (1) This chapter applies when an unsolicited commercial elec-
169 tronic mail message is initiated from a computer located in Massa-
170 chusetts, or via an electronic mail service provider's service or
171 equipment located in Massachusetts, or when the sender knows or
172 should know that the recipient of an unsolicited commercial elec-
173 tronic mail message is a Massachusetts resident. For purposes of
174 this section, "knows or should know" means that the sender pos-
175 sesses information indicating that a recipient is a Massachusetts
176 resident or knows where that information is reasonably obtain-
177 able.

178 (2) Nothing in this chapter shall be construed to limit or restrict
179 the rights of an electronic mail service provider under
180 Section 230(c)(1) of Title 47 of the United States Code, or any

181 decision of an electronic mail service provider to permit or to
182 restrict access to or use of its system, or any exercise of its edito-
183 rial function.

184 Section 5.

185 The Office of Consumer Affairs and Business Regulation
186 (“OCABR”) shall consult with government entities, local internet
187 service providers, local electronic mail service providers, direct
188 marketers, businesses, and other community advocates to create a
189 consumer action plan to help consumers understand their rights
190 with regard to unsolicited commercial electronic mail messages.
191 The OCABR shall work with local internet service providers,
192 local electronic mail service providers, direct marketers and other
193 companies to disseminate information about the availability of
194 and instructions on how to request educational literature from the
195 office. The OCABR shall include on its internet website informa-
196 tion that informs consumers of their rights when receiving unso-
197 licited commercial electronic mail and the various methods of
198 seeking relief, including filing a complaint with the Attorney Gen-
199 eral’s Office.

200 Section 6. This chapter shall take effect 120 days from the day
201 it is enacted.”.

