

108TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To eliminate the burdens and costs associated with electronic mail spam by prohibiting the transmission of all unsolicited commercial electronic mail to persons who place their electronic mail addresses on a national No-Spam Registry, and to prevent fraud and deception in commercial electronic mail by imposing requirements on the content of all commercial electronic mail messages.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Pornography and  
5 Abusive Marketing Act” or the “SPAM Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Electronic mail is an increasingly valuable  
2 tool for personal and commercial communication.  
3 Unsolicited commercial electronic mail (UCE), com-  
4 monly known as spam, however, has become an im-  
5 pediment to efficient electronic mail use and creates  
6 problems for all types of users and organizations, in-  
7 cluding Internet Service Providers, individual users,  
8 and corporate organizations.

9           (2) UCE often contains objectionable, fraudu-  
10 lent, and offensive content. The Federal Trade Com-  
11 mission reports that over 60 percent of all UCE con-  
12 tains false, misleading, or deceptive information.  
13 Nearly one-fourth contains sexually explicit imagery.  
14 Parents have little ability to prevent these images  
15 from reaching their child's electronic mail in-box.

16           (3) Consumers increasingly ignore or delete le-  
17 gitimate commercial messages as they face an ever  
18 increasing amount of UCE. If the vitality and force  
19 of the Internet and electronic mail are to be pre-  
20 served as a tool for commercial communication,  
21 UCE must be curbed.

22           (4) UCE is also a severe financial concern. Lost  
23 productivity, increased spending on technology sys-  
24 tems and personnel, and personal frustration are  
25 some of the costs associated with UCE.

1           (5) Despite the increasing deployment of anti-  
2           spam services and technology, the number and size  
3           of spam messages are growing faster than ever. In  
4           1999, the average electronic mail user received just  
5           40 pieces of UCE per year. In 2003, the number is  
6           expected to pass 2,500. Experts estimate as much as  
7           70 percent of electronic mail traffic qualifies as  
8           UCE.

9           (6) Existing anti-spam service solutions alone  
10          are insufficient to stop the growth of spam. Despite  
11          the fact that Internet Service Providers spend mil-  
12          lions of dollars each year on research, filtering and  
13          other anti-spam software, and larger servers to deal  
14          with the ever expanding volume of UCE, current  
15          technology alone cannot control the spam problem.

16          (7) Federal law does not specifically address  
17          UCE and leaves Federal and State law enforcement  
18          and consumers with inadequate redress for the prob-  
19          lem.

20 **SEC. 3. PURPOSES.**

21          The purposes of this Act are to—

22               (1) preserve electronic mail as a vital tool in  
23               interstate commerce by—

24                       (A) reducing the costs associated with  
25                       UCE;

- 1 (B) reducing the amount of UCE; and
- 2 (C) eliminating false, misleading, and de-
- 3 ceptive content in all commercial electronic
- 4 mail; and
- 5 (2) give consumers control over their in-boxes.

6 **SEC. 4. DEFINITIONS.**

7 In this Act:

8 (1) AFFIRMATIVE CONSENT.—The term “af-

9 firmative consent”, when used with respect to a

10 commercial electronic mail message, means—

11 (A) the message falls within the scope of

12 an express and unambiguous invitation or per-

13 mission granted by the recipient and not subse-

14 quently revoked;

15 (B) the recipient had clear and con-

16 spicuous notice, at the time such invitation or

17 permission was granted, of—

18 (i) the fact that the recipient was

19 granting the invitation or permission;

20 (ii) the scope of the invitation or per-

21 mission, including what types of commer-

22 cial electronic mail messages would be cov-

23 ered by the invitation or permission and

24 what senders, if any, other than the party

25 to whom the invitation or permission was

1           communicated would be covered by the in-  
2           vitation or permission; and

3                   (iii) a reasonable and effective mecha-  
4           nism for revoking the invitation or permis-  
5           sion; and

6           (C) the recipient has not, after granting  
7           the invitation or permission, submitted a re-  
8           quest under section 204 not to receive unsolic-  
9           ited commercial electronic mail messages from  
10          the sender of the message.

11          (2) COMMERCIAL ELECTRONIC MAIL MES-  
12          SAGE.—The term “commercial electronic mail mes-  
13          sage” means any electronic mail message the pri-  
14          mary purpose of which is to advertise or promote,  
15          for a commercial purpose, a commercial product or  
16          service (including content on an Internet website).

17          (3) COMMISSION.—The term “Commission”  
18          means the Federal Trade Commission.

19          (4) DOMAIN NAME.—The term “domain name”  
20          means any alphanumeric designation which is reg-  
21          istered with, or assigned by, any domain name reg-  
22          istrar, domain name registry, or other domain name  
23          registration authority as part of an electronic mail  
24          address on the Internet.

25          (5) ELECTRONIC MAIL ADDRESS.—

1           (A) IN GENERAL.—The term “electronic  
2           mail address” means a destination (commonly  
3           expressed as a string of characters) to which  
4           electronic mail can be sent or delivered.

5           (B) INCLUSION.—In the case of the Inter-  
6           net, the term “electronic mail address” may in-  
7           clude an electronic mail address consisting of a  
8           user name or mailbox (commonly referred to as  
9           the “local part”) and a reference to an Internet  
10          domain (commonly referred to as the “domain  
11          part”).

12          (6) ELECTRONIC MAIL SERVICE.—The term  
13          “electronic mail service” means a service for the  
14          transmission of electronic mail messages that re-  
15          ceives the content of, and recipient list for, electronic  
16          mail messages that it sends from the person or enti-  
17          ty procuring such services. For purposes of this Act,  
18          to be an electronic mail service, such service must  
19          retain identifying information about the person or  
20          entity procuring services and cooperate with law en-  
21          forcement actions brought under this Act.

22          (7) FUNCTIONING RETURN ELECTRONIC MAIL  
23          ADDRESS.—

24                 (A) The term “functioning return elec-  
25                 tronic mail address” means a legitimately ob-

1           tained electronic mail address, clearly and con-  
2           spicuously displayed in an electronic mail mes-  
3           sage, that—

4                   (i) remains capable of receiving mes-  
5                   sages for no less than 30 days after the  
6                   transmission of such commercial electronic  
7                   mail message; and

8                   (ii) that has capacity reasonably cal-  
9                   culated, in light of the number of recipi-  
10                  ents of the electronic mail message, to en-  
11                  able it to receive the full expected quantity  
12                  of reply messages from such recipients.

13                (B) An electronic mail address that meets  
14                the requirements of subparagraph (A) shall not  
15                be excluded from this definition because of a  
16                temporary inability to receive electronic mail  
17                messages due to technical problems, provided  
18                steps are taken to correct such technical prob-  
19                lems within a reasonable time period.

20                (8) HEADER INFORMATION.—The term “header  
21                information” means the source, destination, and  
22                routing information, or information authenticating  
23                the sender, associated with an electronic mail mes-  
24                sage, including the originating domain name, origi-  
25                nating electronic mail address, information regard-

1       ing any part of the route that an electronic mail  
2       message travels or appears to travel on the Internet  
3       or on an online service, or other authenticating in-  
4       formation.

5           (9) IMPLIED CONSENT.—The term “implied  
6       consent”, when used with respect to a commercial  
7       electronic mail message, means—

8           (A) within the 3-year period ending upon  
9       receipt of such message, there has been a busi-  
10      ness transaction between the sender and the re-  
11      cipient (including a transaction involving the  
12      provision, free of charge, of information, goods,  
13      or services requested by the recipient); and

14          (B) the recipient was, at the time of such  
15      transaction or thereafter, provided a clear and  
16      conspicuous notice of an opportunity not to re-  
17      ceive commercial electronic mail messages from  
18      the sender and has not exercised such oppor-  
19      tunity.

20          (10) INITIATE.—The term “initiate” means to  
21      originate an electronic mail message or to procure  
22      the origination of such message, regardless of wheth-  
23      er the message reaches its intended recipients, and  
24      does not include the actions of an Internet access  
25      service or an electronic mail service used by another

1 person for the transmission of an electronic mail  
2 message for which another person has provided and  
3 selected the recipient electronic mail addresses. For  
4 purposes of this Act, more than 1 person may be  
5 considered to have initiated the same message.

6 (11) INTERNET.—The term “Internet” has the  
7 meaning given that term in the Internet Tax Free-  
8 dom Act (Public Law 105–277, div. C, title XI,  
9 § 1101(e)(3)(c)).

10 (12) INTERNET ACCESS SERVICE.—The term  
11 “Internet access service” has the meaning given that  
12 term in section 231(e)(4) of the Communications  
13 Act of 1934 (47 U.S.C. 231(e)(4)).

14 (13) PROTECTED COMPUTER.—The term “pro-  
15 tected computer” has the meaning given that term  
16 in section 1030(e)(2) of title 18, United States  
17 Code.

18 (14) RECIPIENT.—The term “recipient”, when  
19 used with respect to a commercial electronic mail  
20 message, means the addressee of such message. If  
21 an addressee of a commercial electronic mail mes-  
22 sage has 1 or more electronic mail addresses in addi-  
23 tion to the address to which the message was ad-  
24 dressed, the addressee shall be treated as a separate  
25 recipient with respect to each such address.

1           (15) REGISTERED ELECTRONIC MAIL AD-  
2           DRESS.—The term “registered electronic mail ad-  
3           dress” means an electronic mail address which has  
4           been placed on the No-Spam Registry administered  
5           by the Federal Trade Commission by the owner of  
6           the electronic mail address.

7           (16) ROUTINE CONVEYANCE.—The term “rou-  
8           tine conveyance” means the transmission, routing,  
9           relaying, handling, or storing, through an automatic  
10          technical process, of an electronic mail message for  
11          which another person has provided and selected the  
12          recipient addresses.

13          (17) SENDER.—The term “sender”, when used  
14          with respect to a commercial electronic mail message  
15          or an unsolicited commercial electronic mail mes-  
16          sage, means a person who initiates such a message  
17          and whose product, service, or Internet web site is  
18          advertised or promoted by the message, but does not  
19          include any person, including a provider of Internet  
20          access service or electronic mail service, whose role  
21          with respect to the message is limited to routine con-  
22          veyance of the message.

23          (18) UNSOLICITED COMMERCIAL ELECTRONIC  
24          MAIL MESSAGE; UCE.—

1 (A) IN GENERAL.—The terms “unsolicited  
2 commercial electronic mail message” and  
3 “UCE” mean any commercial electronic mail  
4 message that is sent to a recipient—

5 (i) without prior affirmative consent  
6 or implied consent from the recipient; or

7 (ii) to a recipient who, subsequent to  
8 the establishment of affirmative or implied  
9 consent under clause (i), has expressed, in  
10 a reply submitted pursuant to section 204,  
11 or in response to any other opportunity the  
12 sender may have provided to the recipient,  
13 a desire not to receive commercial elec-  
14 tronic mail messages from the sender.

15 (B) EXCLUSION.—Notwithstanding sub-  
16 paragraph (A), the term “unsolicited commer-  
17 cial electronic mail message” does not include  
18 an electronic mail message sent by or on behalf  
19 of one or more lawful owners of copyright, pat-  
20 ent, publicity, or trademark rights to an unau-  
21 thorized user of protected material notifying  
22 such user that the use is unauthorized and re-  
23 questing that the use be terminated or that per-  
24 mission for such use be obtained from the  
25 rights holder or holders.

1 **TITLE I—PROTECTION FROM UN-**  
2 **SOLICITED ELECTRONIC**  
3 **MAIL**

4 **SEC. 101. ESTABLISHMENT OF THE NATIONAL NO-SPAM**  
5 **REGISTRY.**

6 (a) IN GENERAL.—The Commission shall establish a  
7 registry (referred to in this section as the “Registry”) in  
8 which any person that does not wish to receive unsolicited  
9 commercial electronic mail may register electronic mail ad-  
10 dresses.

11 (b) REGISTRATION.—The Commission shall permit  
12 any person to register the electronic mail addresses of the  
13 person, or the electronic mail addresses over which the  
14 person has authority or control, including registration by  
15 electronic mail, on the Registry.

16 (c) REGISTRATION BY PARENT.—The Commission  
17 shall permit a parent, legal guardian, or other person with  
18 control or authority over electronic mail addresses to  
19 which minor children have access, to register such ad-  
20 dresses.

21 (d) PROHIBITION ON UNSOLICITED COMMERCIAL  
22 ELECTRONIC MAIL TO REGISTERED ADDRESSES.—Ex-  
23 cept as otherwise authorized by the Commission in regula-  
24 tions prescribed under this section, it shall be unlawful

1 for a person to initiate UCE to a registered electronic mail  
2 address.

3 **SEC. 102. ENFORCEMENT.**

4 (a) ENFORCEMENT POWERS.—

5 (1) IN GENERAL.—The Commission shall en-  
6 force this section as part of its duties under the  
7 Federal Trade Commission Act (15 U.S.C. 41 et  
8 seq.).

9 (2) REPORTING OF VIOLATIONS.—For purposes  
10 of the enforcement of section 101(d), the Commis-  
11 sion shall establish procedures to permit the report-  
12 ing of violations of this section to the Commission,  
13 including appropriate links on the Internet web site  
14 of the Commission and the use of a toll-free tele-  
15 phone number (commonly referred to as an “800  
16 number”) for such purposes.

17 (b) CIVIL PENALTY.—

18 (1) IN GENERAL.—The Commission may im-  
19 pose a civil penalty not to exceed \$5,000 for each  
20 violation of section 101(d). For purposes of this  
21 paragraph, each day of violation shall constitute a  
22 separate offense.

23 (2) UNAUTHORIZED USE OF REGISTRY.—The  
24 Commission may impose a civil penalty not to exceed  
25 \$100,000 for each unauthorized use of the Registry.

1 **SEC. 103. REGULATIONS.**

2 (a) **IN GENERAL.**—Not later than 180 days after the  
3 date of enactment of this Act, the Commission shall issue  
4 regulations for establishing and maintaining the Registry,  
5 providing secure distribution of the Registry to marketers  
6 for the purpose of complying with this section, protecting  
7 the Registry from unauthorized use, and enforcing the  
8 provisions of this section.

9 (b) **PROTECTION OF CHILDREN.**—

10 (1) **CREATION OF CATEGORIES.**—The Commis-  
11 sion may create specific categories of electronic mail  
12 for which recipients who are minors can receive pro-  
13 tection under this Act.

14 (2) **TYPES OF CATEGORIES.**—The categories  
15 created under paragraph (1) may include—

16 (A) products or services that a minor child  
17 is prohibited by law from purchasing; and

18 (B) electronic mail that contains or adver-  
19 tises adult content or links to such content.

20 (3) **COMPLIANCE.**—Senders shall honor the cat-  
21 egories created under paragraph (1) without regard  
22 to actual or implied consent given by the minor.

23 (c) **FEEES.**—The Commission shall include in its regu-  
24 lations a method for assessing fees on marketers for use  
25 of the Registry that are sufficient to establish, administer,  
26 and maintain the Registry.

1 **SEC. 104. SAFE HARBOR FOR REASONABLE PROCEDURES.**

2 No person shall be in violation of this Act if—

3 (1) the electronic mail address has been on the  
4 Registry for less than 30 days; or

5 (2) the person reasonably relies on the Registry  
6 provided by the Commission and takes reasonable  
7 measures to comply with this Act.

8 **TITLE II—REQUIREMENTS FOR**  
9 **SENDERS OF UNSOLICITED**  
10 **COMMERCIAL ELECTRONIC**  
11 **MAIL AND COMMERCIAL**  
12 **ELECTRONIC MAIL**

13 **SEC. 201. LABELING REQUIREMENTS FOR UNSOLICITED**  
14 **COMMERCIAL ELECTRONIC MAIL.**

15 (a) INCLUSION OF IDENTIFIER IN UNSOLICITED  
16 COMMERCIAL ELECTRONIC MAIL.—Except as provided in  
17 subsection (b), it shall be unlawful for any person to ini-  
18 tiate the transmission of any UCE to a protected com-  
19 puter unless the message provides clear and conspicuous  
20 identification that the message is an advertisement or so-  
21 licitation, by providing, as the first characters in the sub-  
22 ject line, “ADV:”.

23 (b) SAFE HARBOR.—Subsection (a) shall not apply  
24 if—

25 (1) the sender is a member of a self-regulatory  
26 organization approved by the Commission under

1 subsection (c) and has agreed in writing to meet the  
2 requirements for participation established by that  
3 organization; and

4 (2) the sender is deemed by the self-regulatory  
5 organization to be in full compliance with the re-  
6 quirements of that organization.

7 (c) APPROVAL BY THE COMMISSION.—The Commis-  
8 sion may approve a self-regulatory organization under this  
9 section if the Commission finds the following:

10 (1) PARTICIPATION REQUIREMENTS.—The self-  
11 regulatory organization has implemented guidelines  
12 and procedures that require program participants,  
13 which may include a company or any of its divisions,  
14 to—

15 (A) adhere to the requirements of this Act;

16 (B) provide information in each electronic  
17 mail message sufficient to identify the company  
18 on whose behalf the electronic mail is sent;

19 (C) provide notice, through a publicly  
20 available policy, of—

21 (i) the ways in which electronic mail  
22 addresses are collected by the participant;

23 (ii) how such addresses are used; and

24 (iii) to whom such addresses are dis-  
25 closed;

1 (D) provide a conspicuous link in each  
2 electronic mail message to the notice referred to  
3 in subparagraph (C);

4 (E) provide recipients with a clear and  
5 conspicuous opportunity to make choices re-  
6 garding the use of their electronic mail address-  
7 es, including the disclosure of such addresses to  
8 third parties in each electronic mail message;

9 (F) enable consumers to correct or  
10 modify—

11 (i) their electronic mail addresses col-  
12 lected by the participant; or

13 (ii) any of the choices consumers have  
14 made regarding the use and disclosure of  
15 such addresses;

16 (G) take reasonable steps designed to pre-  
17 vent the unauthorized disclosure or release of  
18 electronic mail addresses;

19 (H) provide clear and conspicuous informa-  
20 tion in each electronic mail message sufficient  
21 to inform recipients how they can file a com-  
22 plaint regarding the failure of a participant to  
23 follow the requirements of the self-regulatory  
24 organization of the stated practices of the par-  
25 ticipant; and

1 (I) provide an agent for service of process  
2 and consent to suit in the United States.

3 (2) ELIGIBILITY AND VERIFICATION.—The self-  
4 regulatory organization has implemented procedures  
5 and requirements to provide for—

6 (A) a written certification from a senior  
7 corporate officer or other responsible executive  
8 of the participant, prior to determining eligi-  
9 bility to participate in the self-regulatory orga-  
10 nization, that states—

11 (i) the participant has procedures and  
12 practices in place that are designed to sat-  
13 isfy, at a minimum, the guidelines, proce-  
14 dures, requirements, and restrictions of the  
15 self-regulatory organization; and

16 (ii) the participant has taken good  
17 faith efforts to maintain compliance with  
18 the guidelines, procedures, requirements,  
19 and restrictions of the self-regulatory orga-  
20 nization; and

21 (B) subsequent periodic review of the pol-  
22 icy and practices of a participant to ensure the  
23 compliance with the requirements of the organi-  
24 zation.

1           (3) EVIDENCE OF PARTICIPATION.—The self-  
2 regulatory organization has implemented provisions  
3 to identify participation in the program, including a  
4 seal that can be recognized by filtering technology.

5           (4) DISPUTE RESOLUTION PROCESS.—

6           (A) SELF-REGULATORY ORGANIZATION  
7 PROCESS.—

8           (i) IN GENERAL.—The self-regulatory  
9 organization has implemented a dispute  
10 resolution process for recipients of UCE  
11 from program participants.

12           (ii) PROCESS REQUIREMENTS.—The  
13 dispute resolution process implemented  
14 under clause (i)—

15           (I) must be available without  
16 charge to a recipient;

17           (II) must be available to the par-  
18 ticipant at a reasonable cost;

19           (III) must be completed not later  
20 than 30 days after submission of a  
21 dispute by the recipient and notifica-  
22 tion to the participant, or not later  
23 than 60 days after submission of the  
24 dispute if the participant notifies the  
25 recipient that additional time is re-

1                   quired to obtain information to resolve  
2                   the dispute;

3                   (IV) must include procedures for  
4                   suspension and termination of those  
5                   participants who violate the guide-  
6                   lines, procedures, requirements, or re-  
7                   strictions of the organization; and

8                   (V) may include, as one option,  
9                   binding arbitration.

10                  (B) INVOLUNTARY SUSPENSION OR TERMI-  
11                  NATION.—The self-regulatory organization has  
12                  established procedures and requirements that—

13                   (i) enable a participant that is invol-  
14                   untarily suspended or terminated from  
15                   participation in the organization to take  
16                   timely remedial action to achieve compli-  
17                   ance before any suspension or termination  
18                   becomes final;

19                   (ii) provide for mandatory, public re-  
20                   porting of any final decision to involun-  
21                   tarily suspend or terminate a participant;  
22                   and

23                   (iii) provide for notice to the Commis-  
24                   sion of any final decision to involuntarily  
25                   terminate a participant.

1 (C) RESOLUTION BY THE COMMISSION.—

2 (i) IN GENERAL.—The Commission  
3 shall promptly refer any dispute submitted  
4 to the Commission to the participant in-  
5 volved if the recipient at issue has not ini-  
6 tially sought resolution under subpara-  
7 graph (A).

8 (ii) REQUIREMENTS.—A recipient of  
9 UCE may submit a dispute with a pro-  
10 gram participant to the Commission for  
11 resolution under this subparagraph if—

12 (I) the dispute was initially sub-  
13 mitted for resolution through the dis-  
14 pute resolution process of the partici-  
15 pant under subparagraph (A) ;

16 (II) the dispute submitted under  
17 subparagraph (A)—

18 (aa) was not resolved within  
19 30 days after submission of the  
20 dispute by the recipient; or

21 (bb) was not resolved to the  
22 satisfaction of the recipient;

23 (III) notice of the dispute is sub-  
24 mitted to the Commission not later

1 than 30 days after the recipient was  
2 notified of the resolution;

3 (IV) the recipient has not volun-  
4 tarily accepted a resolution of the dis-  
5 pute under subparagraph (A); and

6 (V) the dispute was not resolved  
7 through binding arbitration.

8 (5) INDEPENDENCE.—The self-regulatory orga-  
9 nization has established requirements to help ensure  
10 that program eligibility, compliance, and dispute res-  
11 olution mechanisms and determinations are made  
12 exclusively by persons who are independent of the  
13 program participant.

14 (d) APPLICATION PROCESS.—

15 (1) IN GENERAL.—The Commission shall pro-  
16 mulgate rules for the application process for the ap-  
17 proval of a self-regulatory organization this section.

18 (2) PUBLIC NOTICE.—Upon receipt of an appli-  
19 cation, the Commission shall provide notice of the  
20 application and an opportunity for comment on the  
21 application to the public.

22 (3) DECISION.—The Commission shall—

23 (A) make a decision on an application not  
24 later than 180 days after the application is re-  
25 ceived; and

1 (B) set forth, in writing, its conclusions  
2 with regard to such requests.

3 (4) DURATION.—An application approved by  
4 the Commission shall be approved for a period of 2  
5 years.

6 (5) APPEAL.—Final action by the Commission  
7 on a request for approval of guidelines, or the failure  
8 to act within 180 days on a request for approval of  
9 guidelines, may be appealed to a district court of the  
10 United States or appropriate jurisdiction as provided  
11 for in section 706 of title 5, United States Code.

12 (e) REVOCATION OF APPROVAL.—The Commission  
13 may, after notice and an opportunity to be heard, revoke  
14 approval if the Commission finds that the self-regulatory  
15 organization fails to meet the requirements of this section.

16 (f) RELEASE OF CERTAIN INFORMATION.—The Com-  
17 mission may compel a self-regulatory organization, or the  
18 administrator of the self-regulatory organization, to pro-  
19 vide proprietary information or personally identifiable in-  
20 formation of consumers to the Commission.

21 (g) MISREPRESENTATION OF PARTICIPATION IN THE  
22 SELF-REGULATORY ORGANIZATION.—It shall be unlawful  
23 for an individual or entity to misrepresent that the indi-  
24 vidual or entity is a participant in the self-regulatory orga-

1 nization, including through any evidence referred to in  
2 subsection (c)(3).

3 **SEC. 202. COMPLIANCE WITH ISP POLICIES.**

4 It shall be unlawful for a person to initiate the trans-  
5 mission of commercial electronic mail or UCE in violation  
6 of Internet Service Provider policies with respect to elec-  
7 tronic mail, account registration and use, or other terms  
8 of service.

9 **SEC. 203. VALID INFORMATION.**

10 It shall be unlawful for a sender to initiate the trans-  
11 mission of commercial electronic mail or UCE to a pro-  
12 tected computer that contains false, misleading, or decep-  
13 tive information in the subject line, header or router infor-  
14 mation, or the body of the message, including the informa-  
15 tion regarding unsubscribe option required by section 204.

16 **SEC. 204. UNSUBSCRIBE OPTION.**

17 (a) IN GENERAL.—All commercial electronic mail  
18 and UCE shall contain the following:

19 (1) INCLUSION OF RETURN ADDRESS.—

20 (A) IN GENERAL.—A functioning return  
21 electronic mail address or other Internet-based  
22 mechanism, clearly and conspicuously displayed,  
23 that—

24 (i) a recipient may use to submit a  
25 reply electronic mail message requesting

1 not to receive any future UCE from that  
2 sender at the electronic mail address where  
3 the message was received; and

4 (ii) remains capable of receiving such  
5 messages or communications for no less  
6 than 30 days after the transmission of the  
7 original message.

8 (B) TEMPORARY INABILITY TO RECEIVE  
9 MESSAGES.—A return electronic mail address  
10 or other mechanism does not fail to satisfy the  
11 requirements of subparagraph (A) if it is unex-  
12 pectedly and temporarily unable to receive mes-  
13 sages due to technical or capacity problems, if  
14 the problem with receiving messages is cor-  
15 rected within a reasonable time period.

16 (2) NOTICE OF RIGHT TO DECLINE FURTHER  
17 MESSAGES.—Clear and conspicuous notice, set out  
18 in bold type and in a font no smaller than the small-  
19 est font type used in the remainder of the message,  
20 of the opportunity to decline to receive further com-  
21 mercial electronic mail and UCE from the sender.

22 (b) VIOLATION.—It shall be unlawful for a sender to  
23 initiate transmission of commercial electronic mail or  
24 UCE to a recipient after that recipient has exercised the  
25 unsubscribe option this section.

1 **SEC. 205. PROHIBITION OF TRANSMISSION OF COMMER-**  
2 **CIAL ELECTRONIC MAIL AND UNSOLICITED**  
3 **COMMERCIAL ELECTRONIC MAIL TO AD-**  
4 **DRESSES OBTAINED THROUGH ILLEGAL HAR-**  
5 **VESTING OR AUTOMATED MEANS.**

6 (a) IN GENERAL.—It shall be unlawful for any per-  
7 son to initiate the transmission, to a protected computer,  
8 of a commercial electronic mail message or UCE, or to  
9 assist in the origination of such a message by providing  
10 or selecting addresses to which the message will be sent,  
11 if such person knows that, or acts with reckless disregard  
12 as to whether—

13 (1) the electronic mail address of the recipient  
14 was obtained, using an automated means, from an  
15 Internet website or proprietary online service oper-  
16 ated by another person;

17 (2) the website or proprietary online service  
18 from which the address was obtained included, at  
19 the time the address was obtained, a notice stating  
20 that the operator of such a website or proprietary  
21 online service will not give, sell, or otherwise transfer  
22 addresses maintained by such site or service to any  
23 other party for the purpose of initiating, or enabling  
24 others to initiate, UCE; or



1 to limit the authority of the Commission under any other  
2 provision of law.

3 **SEC. 302. ENFORCEMENT BY CERTAIN OTHER AGENCIES.**

4 (a) IN GENERAL.—Compliance with this Act shall be  
5 enforced—

6 (1) under section 8 of the Federal Deposit In-  
7 surance Act (12 U.S.C. 1818), in the case of—

8 (A) national banks, and Federal branches  
9 and Federal agencies of foreign banks, and any  
10 subsidiaries of such entities (except brokers,  
11 dealers, persons providing insurance, invest-  
12 ment companies, and investment advisers), by  
13 the Office of the Comptroller of the Currency;

14 (B) member banks of the Federal Reserve  
15 System (other than national banks), branches  
16 and agencies of foreign banks (other than Fed-  
17 eral branches, Federal agencies, and insured  
18 State branches of foreign banks), commercial  
19 lending companies owned or controlled by for-  
20 eign banks, organizations operating under sec-  
21 tion 25 or 25A of the Federal Reserve Act (12  
22 U.S.C. 601 and 611), and bank holding compa-  
23 nies and their nonbank subsidiaries or affiliates  
24 (except brokers, dealers, persons providing in-

1 insurance, investment companies, and investment  
2 advisers), by the Board;

3 (C) banks insured by the Federal Deposit  
4 Insurance Corporation (other than members of  
5 the Federal Reserve System) insured State  
6 branches of foreign banks, and any subsidiaries  
7 of such entities (except brokers, dealers, per-  
8 sons providing insurance, investment compa-  
9 nies, and investment advisers), by the Board of  
10 Directors of the Federal Deposit Insurance Cor-  
11 poration; and

12 (D) savings associations the deposits of  
13 which are insured by the Federal Deposit In-  
14 surance Corporation, and any subsidiaries of  
15 such savings associations (except brokers, deal-  
16 ers, persons providing insurance, investment  
17 companies, and investment advisers), by the Di-  
18 rector of the Office of Thrift Supervision;

19 (2) under the Federal Credit Union Act (12  
20 U.S.C. 1751 et seq.) by the Board of the National  
21 Credit Union Administration with respect to any  
22 Federally insured credit union, and any subsidiaries  
23 of such a credit union;

24 (3) under the Securities Exchange Act of 1934  
25 (15 U.S.C. 78a et seq.) by the Securities and Ex-

1 change Commission with respect to any broker or  
2 dealer;

3 (4) under the Investment Company Act of 1940  
4 (15 U.S.C. 80a-1 et seq.) by the Securities and Ex-  
5 change Commission with respect to investment com-  
6 panies;

7 (5) under the Investment Advisers Act of 1940  
8 (15 U.S.C. 80b-1 et seq.) by the Securities and Ex-  
9 change Commission with respect to investment ad-  
10 visers registered under that Act;

11 (6) under State insurance law in the case of  
12 any person engaged in providing insurance, by the  
13 applicable State insurance authority of the State in  
14 which the person is domiciled, subject to section 104  
15 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

16 (7) under part A of subtitle VII of title 49,  
17 United States Code, by the Secretary of Transpor-  
18 tation with respect to any air carrier or foreign air  
19 carrier subject to that part;

20 (8) under the Packers and Stockyards Act,  
21 1921 (7 U.S.C. 181 et seq.) (except as provided in  
22 section 406 of that Act (7 U.S.C. 226, 227)), by the  
23 Secretary of Agriculture with respect to any activi-  
24 ties subject to that Act;

1           (9) under the Farm Credit Act of 1971 (12  
2           U.S.C. 2001 et seq.) by the Farm Credit Adminis-  
3           tration with respect to any Federal land bank, Fed-  
4           eral land bank association, Federal intermediate  
5           credit bank, or production credit association; and

6           (10) under the Communications Act of 1934  
7           (47 U.S.C. 151 et seq.) by the Federal Communica-  
8           tions Commission with respect to any person subject  
9           to the provisions of that Act.

10          (b) EXERCISE OF CERTAIN POWERS.—For the pur-  
11         pose of the exercise by any agency referred to in sub-  
12         section (a) of its powers under any Act referred to in that  
13         subsection, a violation of this Act is deemed to be a viola-  
14         tion of a requirement imposed under that Act. In addition  
15         to its powers under any provision of law specifically re-  
16         ferred to in subsection (a), each of the agencies referred  
17         to in that subsection may exercise, for the purpose of en-  
18         forcing compliance with any requirement imposed under  
19         this Act, any other authority conferred on it by law.

20         **SEC. 303. ENFORCEMENT BY STATES.**

21          (a) CIVIL ACTION.—In any case in which the attor-  
22         ney general of a State has reason to believe that an inter-  
23         est of the residents of that State has been or is threatened  
24         or adversely affected by any person engaging in a practice  
25         that violates this Act, the State, as *parens patriae*, may

1 bring a civil action on behalf of the residents of the State  
2 in a district court of the United States of appropriate ju-  
3 risdiction or in any other court of competent jurisdiction—

4 (1) to enjoin that practice; or

5 (2) to obtain damages on behalf of residents of  
6 the State, in an amount equal to the greater of—

7 (A) the actual monetary loss suffered by  
8 such residents; or

9 (B) the amount determined under sub-  
10 section (b).

11 (b) STATUTORY DAMAGES.—For purposes of sub-  
12 section (a)(2)(B), the amount determined under this sub-  
13 section is the amount calculated by multiplying the num-  
14 ber of willful, knowing, or negligent violations of this Act  
15 by an amount, in the discretion of the court, of up to \$10  
16 (with each separately addressed unlawful message received  
17 by such residents treated as a separate violation). In de-  
18 termining the per-violation penalty under this subsection,  
19 the court shall take into account the degree of culpability,  
20 any history of prior such conduct, ability to pay, the extent  
21 of economic gain resulting from the violation, and such  
22 other matters as justice may require.

23 (c) ATTORNEY FEES.—In the case of any successful  
24 action under subsection (a), the State shall be awarded

1 the costs of the action and reasonable attorney fees as de-  
2 termined by the court.

3 (d) NOTICE.—

4 (1) PRE-FILING.—Before filing an action under  
5 paragraph (1), an attorney general shall provide to  
6 the Commission—

7 (A) written notice of that action; and

8 (B) a copy of the complaint for that ac-  
9 tion.

10 (2) CONTEMPORANEOUS.—If an attorney gen-  
11 eral of a State determines that it is not feasible to  
12 provide the notice required by paragraph (1) before  
13 filing the action, the notice and a copy of the com-  
14 plaint shall be provided to the Commission when the  
15 action is filed.

16 (e) INTERVENTION.—If the Commission receives no-  
17 tice under subsection (d), the Commission—

18 (1) may intervene in the action that is the sub-  
19 ject of the notice; and

20 (2) has the right—

21 (A) to be heard with respect to any matter  
22 that arises in that action; and

23 (B) to file a petition for appeal.

24 (f) CONSTRUCTION.—For purposes of bringing any  
25 civil action under subsection (a), nothing in this Act shall

1 be construed to prevent an attorney general of a State  
2 from exercising the powers conferred on the attorney gen-  
3 eral by the laws of that State to—

4 (1) conduct investigations;

5 (2) administer oaths or affirmations; or

6 (3) compel the attendance of witnesses or the  
7 production of documentary and other evidence.

8 (g) LIMITATION ON STATE ACTION WHILE FEDERAL  
9 ACTION IS PENDING.—If the Commission or other appro-  
10 priate Federal agency under section 208(a) has instituted  
11 a civil action or an administrative action for violation of  
12 this Act, no State attorney general may bring a separate  
13 action under this subsection during the pendency of that  
14 action against any defendant named in the complaint of  
15 the Commission or the other agency for any violation of  
16 this Act alleged in the complaint. Nothing in this sub-  
17 section shall preclude a State from joining an action  
18 brought by the Commission or other agency or cooperating  
19 with the Commission's or agency's prosecution of that ac-  
20 tion.

21 **SEC. 304. ACTION BY PROVIDER OF INTERNET ACCESS**  
22 **SERVICE.**

23 (a) ACTION AUTHORIZED.—A provider of Internet  
24 access service adversely affected by a violation of this Act  
25 may bring a civil action in any district court of the United

1 States with jurisdiction over the defendant, or in any other  
2 court of competent jurisdiction, to—

3 (1) enjoin further violation by the defendant; or

4 (2) recover damages in an amount equal to the  
5 greater of—

6 (A) actual monetary loss incurred by the  
7 provider of Internet access service as a result of  
8 such violation; or

9 (B) the amount determined under sub-  
10 section (b).

11 (b) STATUTORY DAMAGES.—For purposes of sub-  
12 section (a)(2)(B), the amount determined under this para-  
13 graph is the amount calculated by multiplying the number  
14 of willful, knowing, or negligent violations by an amount,  
15 in the discretion of the court, of up to \$10 (with each  
16 separately addressed unlawful message received by such  
17 residents treated as a separate violation). In determining  
18 the per-violation penalty under this subsection, the court  
19 shall take into account the degree of culpability, any his-  
20 tory of prior such conduct, ability to pay, the extent of  
21 economic gain resulting from the violation, and such other  
22 matters as justice may require.

23 (c) ATTORNEY FEES.—In any action brought pursu-  
24 ant to subsection (a), the court may, in its discretion, re-  
25 quire an undertaking for the payment of the costs of such

1 action, and assess reasonable costs, including reasonable  
2 attorneys' fees, against any party.

3 **SEC. 305. ACTION BY INDIVIDUAL CONSUMERS.**

4 (a) ACTION AUTHORIZED.—A recipient adversely af-  
5 fected by a violation of this Act may, if otherwise per-  
6 mitted by the laws or rules of State court, bring, in an  
7 appropriate court of that State, an action to—

8 (1) enjoin further violation by the defendant;

9 (2) recover damages in an amount equal to the  
10 greater of—

11 (A) actual monetary losses incurred by the  
12 plaintiff as a result of such violation; or

13 (B) the amount determined under sub-  
14 section (b); or

15 (3) both enjoin further violation and recover  
16 damages under paragraphs (1) and (2).

17 (b) STATUTORY DAMAGES.—For purposes of sub-  
18 section (a)(2)(B), the amount determined under this sub-  
19 section is the amount calculated by multiplying the num-  
20 ber of willful, knowing, or negligent violations adversely  
21 affecting that recipient by an amount, determined in the  
22 discretion of the court, of not more than \$1,000. Each  
23 separately addressed unlawful electronic mail message re-  
24 ceived by the plaintiff shall be treated as a single violation  
25 regardless of the number of violations contained in that

1 message. In determining the per-violation penalty under  
2 this subsection, the court shall take into account the de-  
3 gree of culpability, any prior history of such conduct, abil-  
4 ity to pay, the extent of economic gain resulting from the  
5 violation, and such other matters as justice may require.

6 (c) LIMITATION ON ACTIONS.—

7 (1) IN GENERAL.—No action may be brought  
8 under or based on this section against an electronic  
9 mail service provider or Internet Service Provider in-  
10 volved in only the routine transmission of the com-  
11 mercial electronic mail or UCE sent in violation of  
12 this Act.

13 (2) INDIVIDUAL RIGHT OF ACTION.—The right  
14 of action granted in this section is an individual  
15 right. No action brought under this section or based  
16 on this section may be maintained as a class action  
17 under Rule 23 of the Federal Rules of Civil Proce-  
18 dure or any State law, rule, or procedure for class  
19 actions or other representative actions.

20 (d) ATTORNEY FEES AND COSTS.—In any action  
21 brought pursuant to subsection (a) the court may, in its  
22 discretion, require the payment of the costs of such action,  
23 and assess reasonable costs, including reasonable attor-  
24 neys' fees, against any party.