

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/28/03 S3/19/03

A Bill

Act 1019 of 2003
HOUSE BILL 1008

5 By: Representatives Creekmore, Ferguson, Rosenbaum, J. Taylor, S. Prater, House, Haak, Anderson,
6 Boyd, Hathorn, Hardwick, P. Bookout, Jackson, L. Prater, Wood, Biggs, Bledsoe, Moore, Thomas,
7 Childers, Bennett, Mathis, Oglesby, Nichols, Borhauer, Bright, Bolin, Hutchinson, Martin, C. Taylor,
8 Roebuck, Penix
9 By: Senators Faris, Altes, Gullett, Baker, Broadway, Whitaker, T. Smith, Glover, G. Jeffress, Capps,
10 Holt, Trusty
11
12

For An Act To Be Entitled

13 AN ACT TO REGULATE THE TRANSMISSION OF
14 UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT
15 ELECTRONIC MAIL; AND FOR OTHER PURPOSES.
16

Subtitle

17 UNSOLICITED COMMERCIAL AND SEXUALLY
18 EXPLICIT ELECTRONIC MAIL FAIR PRACTICES
19 ACT.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 4, Chapter 88 is amended to add an
26 additional subchapter to read as follows:

27 4-88-601. Title.

28 This subchapter may be referred to and cited as the "Unsolicited
29 Commercial and Sexually Explicit Electronic Mail Prevention Act".
30

31 4-88-602. Definitions.

32 As used in this subchapter:

33 (1) "Commercial" means for the purpose of promoting the sale, lease,
34 or exchange of goods, services, or real property;

35 (2) "Computer network" means a set of related remotely connected
36 devices and communication facilities, including two (2) or more computers



1 with capability to transmit data through communication facilities;

2 (3) "Electronic mail" means an electronic message, file, data, or
3 other information that is transmitted;

4 (A) Between two (2) or more computers, computer networks, or
5 electronic terminals; or

6 (B) Within or between computer networks;

7 (4) "Electronic mail address" means a destination, commonly expressed
8 as a string of characters, to which electronic mail may be sent or delivered;

9 (5) "Electronic mail service provider" means a person who:

10 (A) Is an intermediary in the transmission of electronic mail
11 from the sender to the recipient; or

12 (B) Provides to end users of electronic mail service the ability
13 to send and receive electronic mail;

14 (6) "Harmful to minors" shall have the same meaning as set forth in
15 Arkansas Code § 5-68-501;

16 (7) "Interactive computer service" means an information service,
17 system or access software provider that provides or enables computer access
18 by multiple users to a computer server, including specifically a service or
19 system that provides access to the internet and also the systems operated or
20 services offered by libraries or educational institutions;

21 (8) "Internet domain name" means a globally unique, hierarchical
22 reference to an Internet host or service, assigned through centralized
23 Internet authorities, comprising a series of character strings separated by
24 periods, with the right-most string specifying the top of the hierarchy;

25 (9) "Person" shall mean any individual, corporation, partnership,
26 association, limited liability company, any other form or business
27 association or any combination of them;

28 (10) "Pre-existing business relationship" means that there was a
29 business transaction or communication between the initiator and the recipient
30 of a commercial electronic mail message during the five-year period preceding
31 the receipt of that message. A pre-existing business relationship does not
32 exist after a recipient requests to be removed from the distribution list of
33 a sender. If a sender operates through separate lines of business or
34 divisions and holds itself out to the recipient as that particular line of
35 business or division, rather than as the entity of which the line of business
36 or division is a part, then the line of business or the division shall be

1 treated as the sender for purposes of this section.

2 (11) "Sexually explicit electronic mail" means a commercial electronic
3 mail that contains material that is harmful to minors or promotes an
4 electronic link to material that is harmful to minors;

5 (12) "Unsolicited" means without the recipient's express permission,
6 except commercial electronic mail is not unsolicited if the sender has a
7 preexisting business or personal relationship with the recipient.

8
9 4-88-603. Unsolicited commercial or sexually explicit electronic mail
10 - Requirements.

11 (a) Each person who sends or causes to be sent an unsolicited
12 commercial electronic mail or an unsolicited sexually explicit electronic
13 mail through the intermediary of an electronic mail service provider or to an
14 electronic mail address held by a resident of the state shall:

15 (1) Conspicuously state in the electronic mail the sender's:

16 (A) Legal name;

17 (B) Correct street address; and

18 (C) Valid Internet domain name;

19 (2) For a sexually explicit electronic mail, include in the
20 electronic mail a subject line that contains "ADV:ADULT" as the first nine
21 characters;

22 (3) Provide the recipient a convenient, no-cost mechanism to
23 notify the sender not to send any future electronic mail to the recipient,
24 including:

25 (A) Return electronic mail to a valid, functioning return
26 electronic address; and

27 (B) For a sexually explicit electronic mail and if the
28 sender has a toll-free telephone number, the sender's toll-free telephone
29 number; and

30 (4) Conspicuously provide in the text of the electronic mail a
31 notice that:

32 (A) Informs the recipient that the recipient may
33 conveniently and at no cost be excluded from future commercial or sexually
34 explicit electronic mail, as the case may be, from the sender; and

35 (B) For a sexually explicit electronic mail and if the
36 sender has a toll-free telephone number, includes the sender's valid, toll-

1 free telephone number that the recipient may call to be excluded from future
2 electronic mail from the sender.

3 (b) A commercial electronic mail is not unsolicited if the sender has
4 a preexisting business or personal relationship with the recipient. The
5 sender of a commercial electronic mail of this nature must still include in
6 the electronic mail message the required disclosures set forth in
7 subdivisions (a)(3) and (a)(4) of this subsection and shall remove the
8 recipient from future mailings if requested.

9 (c) A person who sends or causes to be sent an unsolicited commercial
10 electronic mail or an unsolicited sexually explicit electronic mail through
11 the intermediary of an electronic mail service provider located in the state
12 or to an electronic mail address held by a resident of the state may not:

13 (1) Use a third party's Internet domain name in identifying the
14 point of origin or in stating the transmission path of the electronic mail
15 without the third party's consent;

16 (2) Misrepresent any information in identifying the point of
17 origin or the transmission path of the electronic mail; or

18 (3) Fail to include in the electronic mail the information
19 necessary to identify the point of origin of the electronic mail.

20 (d) If the recipient of an unsolicited commercial electronic mail or
21 an unsolicited sexually explicit electronic mail notifies the sender that the
22 recipient does not want to receive future commercial electronic mail or
23 future sexually explicit electronic mail from the sender, the sender may not
24 send that recipient a commercial electronic mail or a sexually explicit
25 electronic mail either directly or through a subsidiary or affiliate. If a
26 recipient has requested to be removed from future mailings, the sender may
27 re-contact the recipient if a pre-existing business relationship has been
28 reestablished or if the recipient has expressly requested to receive future
29 mailings from the sender.

30
31 4-88-604. Interactive computer service/electronic mail service
32 provider authority.

33 (a) An interactive computer service or electronic mail service
34 provider may block the receipt or transmission through its service of any
35 bulk electronic mail that it reasonably believes is, or will be, sent in
36 violation of this article.

1 (b) An interactive computer service or electronic mail service
2 provider does not violate this section and the injured party shall not have a
3 cause of action against an interactive computer service or mail service
4 provider due to the fact that the interactive computer service or electronic
5 mail service provider:

6 (1) Is an intermediary between the sender and recipient in the
7 transmission of an e-mail that violates this section; or

8 (2) Provides transmission of unsolicited commercial electronic
9 mail messages over the provider's computer network or facilities, or shall be
10 liable for any action it voluntarily takes in good faith to block the receipt
11 or transmission through its service of any electronic mail advertisements
12 that it believes is, or will be, sent in violation of this section.

13 (c) An interactive computer service may disconnect or terminate the
14 service of any person that is in violation of this subchapter.

15
16 4-88-605. Criminal penalty.

17 (a) A person who violates any requirement of § 4-88-603 with respect
18 to an unsolicited sexually explicit electronic mail is guilty of a class B
19 misdemeanor.

20 (b) A person who is found guilty of, or pleads guilty or nolo
21 contendere, to violations of § 4-88-603 is not relieved from civil liability
22 in an action under § 4-88-605.

23
24 4-88-606. Civil action for violation -- Election on damages -- Costs
25 and attorney fees -- Defense.

26 (a) For any violation of a provision of this subchapter, an action may
27 be brought by:

28 (1) A person who received the unsolicited commercial electronic
29 mail or unsolicited sexually explicit electronic mail which violates this
30 subchapter; or

31 (2) An electronic mail service provider through whose facilities
32 the unsolicited commercial electronic mail or unsolicited sexually explicit
33 electronic mail was transmitted.

34 (b) In each action under subsection (a)(1), a recipient or electronic
35 mail service provider may:

36 (1) Elect, in lieu of actual damages, to recover the lesser of:

1 (A) Ten dollars (\$10.00) per unsolicited commercial
2 electronic mail or unsolicited sexually explicit electronic mail sent to a
3 previously opted out electronic mail address or transmitted through the
4 electronic mail service provider or otherwise sent in violation of this
5 subchapter; or

6 (B) Twenty-five thousand dollars (\$25,000) per day the
7 violation occurs.

8 (2) Each prevailing recipient or electronic mail service
9 provider shall be awarded costs and reasonable attorneys fees.

10 (c) It is an affirmative defense to a violation of this section if a
11 person can demonstrate that the sender at the time of the alleged violation
12 had:

13 (1) Maintained a list of consumers who have notified the person
14 not to send any subsequent commercial electronic messages;

15 (2) Established and implemented with due care, reasonable
16 practices and procedures to effectively prevent unsolicited commercial
17 electronic mail messages in violation of this section;

18 (3) Trained the sender's personnel in the requirements of this
19 section; and

20 (4) Maintained records demonstrating compliance with this
21 section.

22
23 4-88-607. Enforcement of subchapter.

24 (a)(1) Any transmission of unsolicited commercial or sexually explicit
25 electronic mail in violation of this subchapter shall constitute an unfair
26 and deceptive act or practice under § 4-88-107.

27 (2) All remedies, penalties, and authority granted to the
28 Attorney General under the Arkansas Code § 4-88-101 through § 4-88-113 or
29 this subchapter shall be available to the Attorney General for the
30 enforcement of this subchapter.

31 (b) The prosecuting attorneys of the various districts and counties of
32 this state shall also have full authority to enforce the provisions of this
33 subchapter.

34 (c) Nothing in the provisions of this subchapter shall prohibit the
35 bringing of a civil action against a violator of this chapter by an
36 individual harmed by a deceptive trade practice.

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/s/ Creekmore

APPROVED: 4/2/2003