

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 1008

"UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT ELECTRONIC MAIL
PREVENTION ACT."

Amendment No. 1 to House Bill No. 1008.

Amend House Bill No. 1008 as originally introduced:

Add Senators Faris, Altes, Gullett, Baker, Broadway, Whitaker, and T. Smith as cosponsors of the bill

AND

Add Representatives Ferguson, Rosenbaum, J. Taylor, S. Prater, House, Haak, Anderson, Boyd, Hathorn, Hardwick, P. Bookout, Jackson, L. Prater, Wood, Biggs, Bledsoe, Moore, Thomas, Childers, Bennett, Mathis, Oglesby, Nichols, Borhauer, Bright, Bolin, Hutchinson, Martin, C. Taylor, Roebuck, and Penix as cosponsors of the bill

AND

Page 1, delete lines 9 through 11, and substitute the following:
"AN ACT TO REGULATE THE TRANSMISSION OF UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT ELECTRONIC MAIL; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 14 and 15, and substitute the following:
"UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT ELECTRONIC MAIL FAIR PRACTICES ACT."

AND

Page 1, delete lines 30 through 32 and substitute the following:
"(2) "Computer network" means a set of related remotely connected devices and communication facilities, including two (2) or more computers with capability to transmit data through communication facilities;"

AND



Page 2, delete line 1, and substitute the following:

"(B) Within or between computer networks;"

AND

Page 2, delete lines 9 through 19, and substitute the following:

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

AND

Page 2, delete lines 20 through 30, and substitute the following:

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

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

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

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

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

(12) "Unsolicited" means without the recipient's express permission."

AND

Page 3, delete lines 8 through 12 and substitute the following:

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

AND

Page 3, delete line 31, and substitute the following:

"a preexisting business or personal relationship with the recipient. The sender of a commercial electronic mail of this nature must still include in the electronic mail message the required disclosures set forth in

subdivisions (a)(3) and (a)(4) of this subsection and shall remove the recipient from future mailings if requested."

AND

Page 4, delete line 12, and substitute the following:

"electronic mail either directly or through a subsidiary or affiliate. If a recipient has requested to be removed from future mailings, the sender may re-contact the recipient if a pre-existing business relationship has been reestablished or if the recipient has expressly requested to receive future mailings from the sender."

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

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

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

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

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

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

AND

Page 4, line 14, delete "4-88-604." and substitute "4-88-605."

AND

Page 4, line 22, delete "4-88-605." and substitute "4-88-606."

AND

Page 4, line 24, delete "§ 4-88-603" and substitute "this subchapter"

AND

Page 4, delete lines 27 and 28, and substitute the following:

"mail or unsolicited sexually explicit electronic mail which violates this subchapter; or"

AND

Page 4, delete lines 34 through 36 and substitute the following:

"(1) Elect, in lieu of actual damages, to recover the lesser of:
(A) Ten dollars (\$10.00) per unsolicited commercial
electronic mail or unsolicited sexually explicit electronic mail sent to a
previously opted out electronic mail address or transmitted through the
electronic mail service provider or otherwise sent in violation of this
subchapter; or
(B) Twenty-five thousand dollars (\$25,000) per day the
violation occurs.
(2) Each prevailing recipient or electronic mail service
provider shall be awarded costs and reasonable attorneys fees."

AND

Page 5, delete lines 1 through 16 and substitute the following:

"(c) It is an affirmative defense to a violation of this section if a
person can demonstrate that the sender at the time of the alleged violation
had:
(1) Maintained a list of consumers who have notified the person
not to send any subsequent commercial electronic messages;
(2) Established and implemented with due care, reasonable
practices and procedures to effectively prevent unsolicited commercial
electronic mail messages in violation of this section;
(3) Trained the sender's personnel in the requirements of this
section; and
(4) Maintained records demonstrating compliance with this
section.

4-88-607. Enforcement of subchapter.

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

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

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

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

The Amendment was read

By: Representative Creekmore
KAS/VJF - 022720030901
VJF495

Chief Clerk