

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

# A Bill

HOUSE BILL 1008

5 By: Representative Creekmore  
6  
7

## For An Act To Be Entitled

8 AN ACT TO PROHIBIT THE TRANSMISSION OF  
9 UNSOLICITED COMMERCIAL AND SEXUALLY EXPLICIT  
10 ELECTRONIC MAIL; AND FOR OTHER PURPOSES.  
11

## Subtitle

12 UNSOLICITED COMMERCIAL AND SEXUALLY  
13 EXPLICIT ELECTRONIC MAIL PREVENTION ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

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

22 4-88-601. Title.

23 This subchapter may be referred to and cited as the "Unsolicited  
24 Commercial and Sexually Explicit Electronic Mail Prevention Act".  
25

26 4-88-602. Definitions.

27 As used in this subchapter:

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

30 (2) "Computer network" means two (2) or more computers that are  
31 interconnected to exchange electronic messages, files, data, or other  
32 information;

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

35 (A) Between two (2) or more computers, computer networks, or  
36 electronic terminals; or



1           (B) Within a computer network;

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

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

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

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

9           (6) "Harmful to minors" means that quality of any description or  
 10 representation, in whatever form, of nudity, sexual conduct, sexual  
 11 excitement, or sadomasochistic abuse when it:

12                 (A) Taken as a whole, appeals to the prurient interest in sex of  
 13 minors;

14                 (B) Is patently offensive to prevailing standards in the adult  
 15 community as a whole with respect to what is suitable material for minors;  
 16 and

17                 (C) Taken as a whole, does not have serious value for minors.  
 18 Serious value includes only serious literary, artistic, political or  
 19 scientific value for minors;

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

24           (8)(A) "Sexually explicit electronic mail" means an electronic mail  
 25 that contains or promotes an electronic link to material that is harmful to  
 26 minors;

27                 (B) An electronic mail is a "sexually explicit electronic mail"  
 28 if it meets the definition in subsection (8)(A), even if the electronic mail  
 29 also meets the definition of a commercial electronic mail;

30           (9) "Unsolicited" means without the recipient's express permission,  
 31 except commercial electronic mail is not unsolicited if the sender has a  
 32 preexisting business or personal relationship with the recipient.

33  
 34           4-88-603. Unsolicited commercial or sexually explicit electronic mail  
 35 – Requirements.

36           (a) Each person who sends or causes to be sent an unsolicited

1 commercial electronic mail or an unsolicited sexually explicit electronic  
 2 mail through the intermediary of an electronic mail service provider or to an  
 3 electronic mail address held by a resident of the state shall:

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

5 (A) Legal name;

6 (B) Correct street address; and

7 (C) Valid Internet domain name;

8 (2) Include in the electronic mail a subject line that contains:

9 (A) For a commercial electronic mail, "ADV:" as the first  
 10 four characters; or

11 (B) For a sexually explicit electronic mail, "ADV:ADULT"  
 12 as the first nine characters;

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

16 (A) Return electronic mail to a valid, functioning return  
 17 electronic address; and

18 (B) For a sexually explicit electronic mail and if the  
 19 sender has a toll-free telephone number, the sender's toll-free telephone  
 20 number; and

21 (4) Conspicuously provide in the text of the electronic mail a  
 22 notice that:

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

26 (B) For a sexually explicit electronic mail and if the  
 27 sender has a toll-free telephone number, includes the sender's valid, toll-  
 28 free telephone number that the recipient may call to be excluded from future  
 29 electronic mail from the sender.

30 (b) A commercial electronic mail is not unsolicited if the sender has  
 31 a preexisting business or personal relationship with the recipient.

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

36 (1) Use a third party's Internet domain name in identifying the

1 point of origin or in stating the transmission path of the electronic mail  
 2 without the third party's consent;

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

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

7 (d) If the recipient of an unsolicited commercial electronic mail or  
 8 an unsolicited sexually explicit electronic mail notifies the sender that the  
 9 recipient does not want to receive future commercial electronic mail or  
 10 future sexually explicit electronic mail from the sender, the sender may not  
 11 send that recipient a commercial electronic mail or a sexually explicit  
 12 electronic mail either directly or through a subsidiary or affiliate.

13  
 14 4-88-604. Criminal penalty.

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

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

21  
 22 4-88-605. Civil action for violation -- Election on damages -- Costs  
 23 and attorney fees -- Defense.

24 (a) For any violation of a provision of § 4-88-603, an action may be  
 25 brought by:

26 (1) A person who received the unsolicited commercial electronic  
 27 mail or unsolicited sexually explicit electronic mail with respect to which  
 28 the violation under § 4-88-603 occurred; or

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

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

34 (1) Recover actual damages; or

35 (2) Elect, in lieu of actual damages, to recover the lesser of:

36 (A) Ten dollars (\$10.00) per unsolicited commercial

1 electronic mail or unsolicited sexually explicit electronic mail received by  
2 the recipient or transmitted through the electronic mail service provider; or

3 (B) Twenty-five thousand dollars (\$25,000) per day that  
4 the violation occurs.

5 (c) Each prevailing recipient or electronic mail service provider  
6 shall be awarded costs and reasonable attorney fees.

7 (d) An electronic mail service provider does not violate § 4-88-603  
8 solely by being an intermediary between the sender and recipient in the  
9 transmission of an electronic mail that violates this subchapter.

10 (e) The violation of § 4-88-603 by an employee does not subject the  
11 employee's employer to liability under this subchapter if the employee's  
12 violation of § 4-88-603 is also a violation of an established policy of the  
13 employer that requires compliance with the requirements of § 4-88-603.

14 (f) It is a defense to an action brought under this subsection that  
15 the unsolicited commercial electronic mail or unsolicited sexually explicit  
16 electronic mail was transmitted accidentally.

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