

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

A Bill

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
10
11

For An Act To Be Entitled

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

Subtitle

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

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

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

26 4-88-601. Title.

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

30 4-88-602. Definitions.

31 As used in this subchapter:

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

34 (2) "Computer network" means a set of related remotely connected
35 devices and communication facilities, including two (2) or more computers
36 with capability to transmit data through communication facilities;



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

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

5 (B) Within or between computer networks;

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

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

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

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

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

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

20 (8) "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 (9) "Person" shall mean any individual, corporation, partnership,
25 association, limited liability company, any other form or business
26 association or any combination of them;

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

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

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

7
8 4-88-603. Unsolicited commercial or sexually explicit electronic mail
9 - Requirements.

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

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

15 (A) Legal name;

16 (B) Correct street address; and

17 (C) Valid Internet domain name;

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

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

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

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

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

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

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

1 electronic mail from the sender.

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

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

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

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

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

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

29
30 4-88-604. Interactive computer service/electronic mail service
31 provider authority.

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

36 (b) An interactive computer service or electronic mail service

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

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

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

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

14
15 4-88-605. Criminal penalty.

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

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

22
23 4-88-606. Civil action for violation -- Election on damages -- Costs
24 and attorney fees -- Defense.

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

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

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

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

35 (1) 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 sent to a
2 previously opted out electronic mail address or transmitted through the
3 electronic mail service provider or otherwise sent in violation of this
4 subchapter; or

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

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

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

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

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

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

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

21
22 4-88-607. Enforcement of subchapter.

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

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

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

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

36 /s/ Creekmore