



## **A SUMMARY OF HOUSE BILL 4519 AS INTRODUCED 4-2-03**

The bill would create a new act, the “Unsolicited Commercial E-mail Protection Act”, to regulate e-mail messages that promote goods, services, and real property and are sent without the recipient’s express permission. Senders of unsolicited “e-mail ads” would have to identify themselves, indicate in the subject heading that the message contained an advertisement, and allow recipients of such ads to “conveniently and at no cost” opt out of receiving future unsolicited e-mail ads from the sender. In addition, the bill would allow e-mail service providers to block messages sent in violation of the act, provide criminal penalties for such violations, and establish a cause of action allowing recipients and service providers to recover damages for violations.

Identification of sender/nature of message and opt-out provisions. A person who sent or caused to be sent an unsolicited commercial e-mail message through an e-mail service provider located in the state or to an e-mail address held by a resident of the state would have to do all of the following:

- conspicuously state in the text of the e-mail the sender’s name, correct street address, and valid Internet domain name;
- include in the e-mail subject line “ADV:” as the first four characters;
- establish a toll-free telephone number, a valid sender-operated return e-mail address, or another “easy-to-use” electronic method that the recipient of the commercial e-mail could use to notify the sender not to send anymore unsolicited e-mail ads; and
- conspicuously provide in the text of the e-mail a notice that informed the recipient that the recipient could conveniently and at no cost be excluded from future unsolicited commercial e-mail from the sender, as provided above.

“Commercial e-mail” would be defined as an electronic message, file, data, or other information promoting the sale, lease, or exchange of goods, services, or real property that was transmitted between two or more computers, computer networks, or electronic terminals within a computer network. A commercial e-mail (“e-mail advertisement” or “e-mail ad”) would be considered “unsolicited” if it was sent without the recipient’s express permission, unless the sender had a preexisting business or personal relationship with the recipient.

Disclosure of transmission/routing information. A person who sent (or caused to be sent) an unsolicited e-mail advertisement through an e-mail service provider located in the state or to an e-mail address held by a resident of the state could not do any of the following: use a third-party's Internet domain name in identifying the point of origin or in stating the transmission path of the e-mail ad without the third party's consent; misrepresent any information in identifying the e-mail's point of origin or the transmission path; fail to include the information necessary to identify the e-mail's point of origin; or provide (directly or indirectly) another person with software that facilitates or enables the falsification of e-mail transmission or routing information.

Notification to stop sending unsolicited ads. If the recipient of an unsolicited e-mail ad notified the sender that he or she did not want to receive future unsolicited e-mail ads from the sender, the sender could no longer send such ads to the recipient directly or through a subsidiary or affiliate. Senders of unsolicited e-mail ads would have to establish and maintain the necessary policies and records to identify persons who had provided such notice, and would have to update their records at least once every two business days.

Sale or distribution of software to falsify transmission/routing information. A person could not knowingly sell, give, or otherwise distribute, or possess with the intent to sell, give, or distribute software that did any of the following: was primarily designed or produced for the purpose of facilitating or enabling the falsification of e-mail ad transmission information or other routing information; had only "limited commercially significant purpose or use" other than facilitating or enabling the falsification of such information; or was marketed by the person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of such information.

Service provider's ability to block unsolicited e-mail ads in violation of act. An e-mail service provider could block the receipt or transmission through its service of any unsolicited e-mail ads that it reasonably believed was, or would be, sent in violation of the act.

Penalties. In general, a violation of the act would be considered a misdemeanor punishable by up to one year of imprisonment and a fine of up to \$10,000. However, persons who violated prohibitions relating to the disclosure of routing and transmission information described above and persons who violated the act in the furtherance of another crime would be guilty of a felony punishable by up to four years in prison and a fine of up to \$25,000. Each e-mail ad sent in violation of the act would be a separate violation.

An e-mail service provider would not be considered to have violated the act solely by acting as an intermediary between the sender and recipient of an unsolicited e-mail ad that violated the act. Also, a sender who transmitted an unsolicited e-mail ad by accident could use that as a defense to a (criminal) action, though the sender would have the burden of proof in offering such a defense.

Remedies. A person who received an unsolicited e-mail ad in violation of the act could sue the sender of the ad, as could an e-mail service provider through whose facilities such an ad was

transmitted. In each such action, a recipient or service provider could recover actual damages or, in lieu of actual damages, the lesser of either \$10 per unsolicited e-mail ad received or transmitted or \$25,000 for each day the violation occurred. The prevailing recipient or service provider would be awarded actual costs and reasonable attorney fees.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.