

HB 2627

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FIRST REGULAR SESSION, 1999

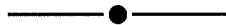


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COMMITTEE SUBSTITUTE
FOR

House Bill No. 2627

(By Delegates Mahan, Coleman, Johnson,
Pino, Linch, Capito and Faircloth)



Passed March 13, 1999

In Effect Ninety Days from Passage

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FOR

H. B. 2627

(BY DELEGATES MAHAN, COLEMAN, JOHNSON,
PINO, LINCH, CAPITO AND FAIRCLOTH)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-g, relating to mailing of certain unsolicited electronic mail messages and establishing prohibitions relating thereto; defining terms; establishing that certain internet messages are prohibited under this article; specifying contents of prohibited messages; prohibiting misrepresenting or falsifying certain information; requiring prior approval, certain disclosures for certain messages activities; authorizing interactive computer services to limit transmissions of any bulk electronic mail which violates this article; limiting liability of interactive computer services for terminating service to persons that violate this article; and establishing a penalty for violations of this article.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-g, to read as follows:

ARTICLE 6G. ELECTRONIC MAIL PROTECTION ACT.

§46A-6G-1. Definitions.

1 As used in this article:

2 (1) "Bulk electronic mail message" means an electronic
3 mail message sent in bulk to users of an interactive computer
4 service who have not requested or solicited the message.
5 Unauthorized for purposes of a bulk electronic mail message,
6 means a bulk electronic mail message sent in quantity in
7 contravention of the authorization granted by or in violation of
8 the policies or contractual rights of the electronic mail service
9 provider.

10 (2) "Electronic mail address" means a destination, com-
11 monly expressed as a string of characters, to which electronic
12 mail may be sent or delivered.

13 (3) "Initiate the transmission" means the action by the
14 original sender of an electronic mail message, not the action by
15 any intervening interactive computer service that may handle or
16 retransmit the message.

17 (4) "Interactive computer service" means any information
18 service, system, or access software provider that provides or
19 enables computer access by multiple users to a computer server,
20 including specifically a service or system that provides access
21 to the internet.

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

27 (6) "Person" means any individual, corporation, partner-
28 ship, association, limited liability company or any other form
29 or business association.

§46A-6G-2. Limitations on unauthorized bulk electronic mail.

1 No person may initiate the transmission of an unauthorized
2 electronic mail message with the intent to deceive and defraud,

3 or a bulk electronic mail message from a computer located in
4 the state of West Virginia or to an electronic mail address that
5 the sender knows, or has reason to know, is held by a West
6 Virginia resident that:

7 (1) Uses a third party's internet domain name without the
8 permission of the third party, or otherwise misrepresents any
9 information in identifying the point of origin or the transmis-
10 sion path of a commercial electronic mail message;

11 (2) Contains false or misleading information in the subject
12 line;

13 (3) Does not clearly provide the date and time the message
14 is sent, the identity of the person sending the message, and the
15 return electronic mail address of that person; or

16 (4) Contains "sexually explicit materials" which are defined
17 as a visual depiction, in actual or simulated form, or an explicit
18 description in a predominately sexual context, nudity, human
19 genitalia, or any act of natural or unnatural sexual intercourse.

§46A-6G-3. Interactive computer service authority; liability.

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

5 (2) An interactive computer service may disconnect or
6 terminate the service of any person that is in violation of this
7 article.

8 (3) No interactive computer service may be held liable for
9 any action voluntarily taken in good faith to block the receipt or
10 transmission through its service of any bulk electronic mail
11 which it reasonably believes is, or will be, sent in violation of
12 this article; nor will any interactive computer service be held
13 liable for any action voluntarily taken in good faith to discon-
14 nect or terminate the service of any person that is in violation
15 of this article.

16 (4) No interactive computer service or public utility will be
17 liable for merely transmitting a bulk electronic mail message on
18 its network.

§46A-6G-4. Sale or possession of enabling software prohibited.

1 No person may sell, give or otherwise distribute or possess
2 with the intent to sell, give or distribute software that:

3 (1) Is primarily designed or produced for the purpose of
4 facilitating or enabling the falsification of electronic mail
5 transmission information or other routing information;

6 (2) Has only a limited commercially significant purpose or
7 use other than to facilitate or enable the falsification of elec-
8 tronic mail transmission information or other routing informa-
9 tion; or

10 (3) That is marketed by that person or another acting in
11 concert with that person with that person's knowledge for use
12 in facilitating or enabling the falsification of electronic mail
13 transmission information or other routing information.

§46A-6G-5. Violations; right of action for injunction, damages.

1 (a) No person or organization may initiate an unauthorized
2 bulk electronic mail message in violation of this article.

3 (b) A recipient of an unauthorized bulk electronic mail
4 message in violation of this article may bring an action to
5 recover actual damages for any injury sustained by the receipt
6 of an unauthorized bulk electronic mail message. In lieu of
7 actual damages, a minimum damage assessment of one thou-
8 sand dollars may be recovered for violations of this article.
9 Punitive damages may be awarded for the willful failure to
10 cease initiating unauthorized bulk electronic mail messages.
11 Court costs and reasonable attorney fees may be awarded for
12 violations of this article.

13 (c) A recipient of an unauthorized bulk electronic mail
14 message initiated in violation of this article may bring an action
15 to enjoin the initiator from sending any further unauthorized
16 bulk electronic mail messages. Any court costs or other costs
17 incident to such action including reasonable attorney fees may
18 be awarded.

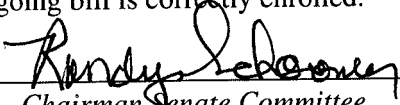
19 (d) Initiating an unauthorized bulk electronic mail message
20 to any computer or computer network located in this State shall

21 constitute an act in the State for the purposes of section thirty-
22 three, article three, chapter fifty-six of this code.

23 (e) Any interactive computer service provider or public
24 utility whose property or person is injured by any violation of
25 this article may bring an action to recover for any damages
26 sustained, including, but not limited to, loss of profits. In
27 addition, court costs and attorney fees may be recovered. The
28 service provider may elect, in lieu of actual damages to recover
29 ten dollars for each and every unauthorized bulk electronic mail
30 message transmitted in violation of this article, or twenty-five
31 thousand dollars per day, whichever is greater.

32 (f) The provisions of this section shall not be construed to
33 limit any person's right to pursue any additional civil remedy
34 otherwise allowed by law.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



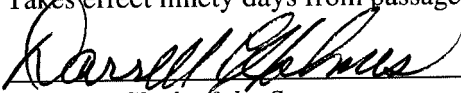
Chairman Senate Committee



Chairman House Committee

Originating in the House.

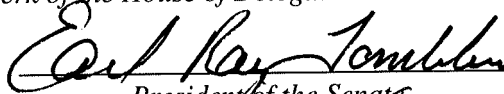
Takes effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

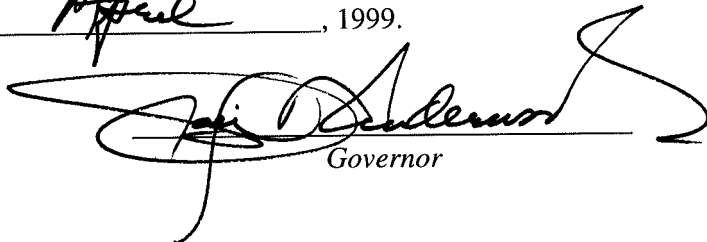


President of the Senate



Speaker of the House of Delegates

The within approved this the 7th
day of April, 1999.



Governor

PRESENTED TO THE

GOVERNOR

Date

4/6/99

Time

2:35pm