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105TH CONGRESS
2D SESSION

H. R. 4176

To amend the Communications Act of 1934 to protect consumers against ‘spamming’, ‘slamming’, and ‘cramming’, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To amend the Communications Act of 1934 to protect consumers against ‘spamming’, ‘slamming’, and ‘cramming’, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Jamming Act
5 of 1998”.

1 **TITLE I—PREVENTION OF**
2 **SPAMMING**

3 **SEC. 101. EXTENSION OF JUNK FAX REMEDIES TO COM-**
4 **MERCIAL EMAIL**

5 Section 227 of the Communications Act of 1934 (47
6 U.S.C. 227) is amended—

7 (1) in subsection (a), by adding at the end the
8 following new paragraphs:

9 “(5) The term ‘unsolicited electronic mail mes-
10 s-
11 sage’ means any electronic mail message that is ad-
12 dressed and sent to a recipient with whom the
13 initiator does not have an existing relationship and
14 has been sent by the initiator without the express
15 consent of the recipient.

16 “(6) The term ‘unsolicited commercial elec-
17 tronic mail message’ means any unsolicited elec-
18 tronic mail message that is sent for the purpose of
19 encouraging the purchase or rental of, or investment
20 in, property, goods, or services.

21 “(7) The term ‘electronic mail service provider’
22 means any entity that provides subscribers the abil-
23 ity to send or receive electronic mail.

24 “(8) The term ‘published policy’ means, with
25 respect to an electronic mail service provider’s policy
on unsolicited electronic mail messages, that such

1 policy is available upon request in written form at no
2 charge or is displayed conspicuously through an on-
3 line notice on the Internet home page of the elec-
4 tronic mail service provider.”;

5 (2) in subsection (c)(3)—

6 (A) by striking “If the Commission deter-
7 mines to require such a database,” and insert-
8 ing “If the Commission determines to require
9 such a database pursuant to paragraph (2), or
10 at any time subsequent to the proceeding re-
11 quired by paragraph (1) determines that a
12 database is required to protect subscribers from
13 telephone solicitations or unsolicited electronic
14 mail messages,”;

15 (B) by striking “and” at the end of sub-
16 paragraph (K);

17 (C) by striking the period at the end of
18 subparagraph (L) and inserting a semicolon;
19 and

20 (D) by adding at the end the following new
21 subparagraphs:

22 “(M) require each electronic mail service
23 provider, in accordance with regulations pre-
24 scribed by the Commission, to inform subscrib-
25 ers for electronic mail service of the opportunity

1 to provide notification, in accordance with such
2 regulations, that such subscribers objects to re-
3 ceiving unsolicited commercial electronic mail
4 messages; and

5 “(N) specify the methods by which each
6 electronic mail service subscriber shall be in-
7 formed, by the electronic mail service provider
8 that provides such service to such subscriber, of
9 (i) the subscriber’s right to give or revoke a no-
10 tification of objection under subparagraph (M),
11 and (ii) the methods by which such right may
12 be exercised by the subscriber.”;

13 (3) by redesignating subsections (e) and (f) as
14 subsections (f) and (g), respectively;

15 (4) by inserting after subsection (d) the follow-
16 ing new subsection:

17 “(e) RESTRICTIONS ON THE USE OF UNSOLICITED
18 COMMERCIAL ELECTRONIC MAIL MESSAGES.—

19 “(1) INFORMATION ABOUT SENDER; RIGHT TO
20 REPLY.—It shall be unlawful for any person within
21 the United States—

22 “(A) to initiate an unsolicited commercial
23 electronic mail message unless such message
24 contains—

1 “(i) the name, street address, elec-
2 tronic mail address, and telephone number
3 of the person who initiates transmission of
4 the message;

5 “(ii) the name, street address, elec-
6 tronic mail address, and telephone number
7 of the person who created the content of
8 the message;

9 “(iii) a reply electronic mail address,
10 conspicuously displayed, where recipients
11 may send a reply to indicate a desire not
12 to receive any further messages; or

13 “(iv) information on how recipients
14 may exercise the rights established pursu-
15 ant to subsection (c)(3);

16 “(B) to initiate an unsolicited commercial
17 electronic mail message to any recipient who
18 has previously indicated a desire not to receive
19 such messages by sending a reply described in
20 subparagraph (A)(iii)); or

21 “(C) to initiate an unsolicited commercial
22 electronic mail message unless such message
23 contains Internet routing information that is
24 accurate, is valid according to prevailing stand-

1 ards for Internet protocols, and correctly re-
2 flects the actual message routing.

3 “(2) ENFORCEMENT OF VOLUNTARY
4 CYBERRULES REGARDING SPAMMING.—

5 “(A) PROHIBITION.—No subscriber of an
6 electronic mail service provider shall use, or
7 cause to be used, the electronic mail service or
8 equipment in violation of that electronic mail
9 service’s published policy prohibiting or restrict-
10 ing the use of its service or equipment for the
11 initiation of an unsolicited commercial elec-
12 tronic mail message.

13 “(B) ENFORCEMENT BY PROVIDERS.—Any
14 subscriber who violates subparagraph (A) for
15 the initiation of an unsolicited commercial elec-
16 tronic mail message shall be liable to the elec-
17 tronic mail service provider for damages in an
18 amount equal to \$50 for each of the provider’s
19 subscribers to whom such message was trans-
20 mitted.”; and

21 (5) in subsection (f)(1) (as redesignated by
22 paragraph (3))—

23 (A) by striking “or” at the end of subpara-
24 graph (C);

1 (B) by striking the period at the end of
2 subparagraph (D) and inserting “; or”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(E) the making of unsolicited commercial
6 electronic mail messages.”.

7 **TITLE II—PREVENTION OF**
8 **SLAMMING AND CRAMMING**

9 **SEC. 201. LIABILITY TO SUBSCRIBERS; AUTHORITY OF**
10 **STATES.**

11 (a) AMENDMENT.—Section 258 of the Communica-
12 tions Act of 1934 (47 U.S.C. 258) is amended by striking
13 subsection (b) and inserting the following:

14 “(b) LIABILITY FOR CHARGES AFTER SLAMMING.—

15 “(1) LIABILITY.—Any telecommunications car-
16 rier that violates the verification procedures de-
17 scribed in subsection (a) and that collects charges
18 for telephone exchange service or telephone toll serv-
19 ice from a subscriber shall be liable, in accordance
20 with such procedures as the Commission may pre-
21 scribe—

22 “(A) to the carrier previously selected by
23 the subscriber in an amount equal to all
24 charges paid by such subscriber after such vio-
25 lation; and

1 “(B) to the subscriber in an amount equal
2 to twice the amount of all charges paid by such
3 subscriber after such violation.

4 “(2) EFFECT ON OTHER LAWS.—The remedies
5 provided by subsection (b) are in addition to any
6 other remedies available by law.

7 “(c) PROHIBITION OF AND LIABILITY FOR CRAM-
8 MING.—

9 “(1) PROHIBITION.—No telecommunications
10 carrier (including billing aggregators and service
11 providers) shall submit for billing on bills for tele-
12 communications services unauthorized services or
13 products.

14 “(2) LIABILITY TO SUBSCRIBER.—Any tele-
15 communication carrier (including billing aggregators
16 and service providers) that violates paragraph (1)
17 and collects charges for unauthorized services or
18 products from a subscriber shall be liable to such
19 subscriber in an amount equal to twice the total
20 amount of charges paid by such subscriber after
21 such violation. The remedies provided by this sub-
22 section are in addition to any other remedies avail-
23 able by law.

24 “(c) ACTIONS BY STATES.—

1 “(1) AUTHORITY OF STATES.—Whenever the
2 attorney general of a State, or an official or agency
3 designated by a State, has reason to believe that any
4 person has engaged or is engaging in a pattern or
5 practice of (A) effecting changes in a subscribers’ se-
6 lections of a provider of telephone exchange service
7 or telephone toll service in violation of this section
8 or the regulations prescribed under this section, or
9 (B) submitting for billing on bills for telecommuni-
10 cations services, and collecting for, unauthorized
11 services or products, shall the State may bring a
12 civil action on behalf of its residents to enjoin such
13 calls, an action to recover for actual monetary loss
14 or receive \$500 in damages for each violation, or
15 both such actions. If the court finds the defendant
16 willfully or knowingly violated such regulations, the
17 court may, in its discretion, increase the amount of
18 the award to an amount equal to not more than 3
19 times the amount available under the preceding sen-
20 tence.

21 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
22 COURTS.—The district courts of the United States,
23 the United States courts of any territory, and the
24 District Court of the United States for the District
25 of Columbia shall have exclusive jurisdiction over all

1 civil actions brought under this subsection. Upon
2 proper application, such courts shall also have juris-
3 diction to issue writs of mandamus, or orders afford-
4 ing like relief, commanding the defendant to comply
5 with the provisions of this section or regulations pre-
6 scribed under this section, including the requirement
7 that the defendant take such action as is necessary
8 to remove the danger of such violation. Upon a prop-
9 er showing, a permanent or temporary injunction or
10 restraining order shall be granted without bond.

11 “(3) RIGHTS OF COMMISSION.—The State shall
12 serve prior written notice of any such civil action
13 upon the Commission and provide the Commission
14 with a copy of its complaint, except in any case
15 where such prior notice is not feasible, in which case
16 the State shall serve such notice immediately upon
17 instituting such action. The Commission shall have
18 the right (A) to intervene in the action, (B) upon so
19 intervening, to be heard on all matters arising there-
20 in, and (C) to file petitions for appeal.

21 “(4) VENUE; SERVICE OF PROCESS.—Any civil
22 action brought under this subsection in a district
23 court of the United States may be brought in the
24 district wherein the defendant is found or is an in-
25 habitant or transacts business or wherein the viola-

1 tion occurred or is occurring, and process in such
2 cases may be served in any district in which the de-
3 fendant is an inhabitant or where the defendant may
4 be found.

5 “(5) INVESTIGATORY POWERS.—For purposes
6 of bringing any civil action under this subsection,
7 nothing in this section shall prevent the attorney
8 general of a State, or an official or agency des-
9 ignated by a State, from exercising the powers con-
10 ferred on the attorney general or such official by the
11 laws of such State to conduct investigations or to
12 administer oaths or affirmations or to compel the at-
13 tendance of witnesses or the production of documen-
14 tary and other evidence.

15 “(6) EFFECT ON STATE COURT PROCEED-
16 INGS.—Nothing contained in this subsection shall be
17 construed to prohibit an authorized State official
18 from proceeding in State court on the basis of an al-
19 leged violation of any general civil or criminal stat-
20 ute of such State.

21 “(7) LIMITATION.—Whenever the Commission
22 has instituted a civil action for violation of regula-
23 tions prescribed under this section, no State may,
24 during the pendency of such action instituted by the
25 Commission, subsequently institute a civil action

1 against any defendant named in the Commission's
2 complaint for any violation as alleged in the Com-
3 mission's complaint.

4 “(8) DEFINITION.—As used in this subsection,
5 the term ‘attorney general’ means the chief legal of-
6 ficer of a State.”.

7 **SEC. 202. NTIA STUDY OF THIRD PARTY VERIFICATION AND**
8 **AUTHENTICATION.**

9 (a) STUDY REQUIRED.—The National Telecommuni-
10 cations and Information Administration of the Depart-
11 ment of Commerce shall conduct a study of the feasibility
12 and desirability of establishing third party verification and
13 authentication systems for preventing illegal changes in
14 telephone subscriber carrier selections. The study shall in-
15 clude—

16 (1) an analysis of the cost of establishing a na-
17 tional, independent database or clearinghouse to au-
18 thorize and verify changes in carrier selections;

19 (2) the additional cost to carriers, per change
20 in carrier selection, to fund the ongoing operation of
21 such an independent database or clearinghouse;

22 (3) the cost and feasibility of implementing
23 such databases or clearinghouses at the State level;
24 and

1 (4) the advantages and disadvantages of utiliz-
2 ing independent databases or clearinghouses for au-
3 thorizing and authenticating carrier selection
4 changes.

5 (b) **REPORT REQUIRED.**—Within 180 days after the
6 date of enactment of this Act, the National Telecommuni-
7 cations and Information Administration shall submit to
8 the Committee on Commerce of the House of Representa-
9 tives and Committee on Commerce, Science, and Trans-
10 portation of the Senate the results of the study required
11 by subsection (a).

○

DOCUMENT NO. 27

