

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 255

H.P. 210

House of Representatives, January 23, 2003

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### An Act to Control Internet "Spam"

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Reference to the Committee on Utilities and Energy suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GOODWIN of Pembroke.

Under suspension of the rules, cosponsored by Representative ADAMS of Portland, Senators: EDMONDS of Cumberland, ROTUNDO of Androscoggin, Senator TREAT of Kennebec and Representatives: ANDREWS of York, BERRY of Belmont, BLISS of South Portland, BOWLES of Sanford, BRUNO of Raymond, BUNKER of Kossuth Township, CLARK of Millinocket, CLOUGH of Scarborough, Speaker COLWELL of Gardiner, COWGER of Hallowell, CRAVEN of Lewiston, DUPLESSIE of Westbrook, FINCH of Fairfield, FISCHER of Presque Isle, FLETCHER of Winslow, GLYNN of South Portland, GROSE of Woolwich, LUNDEEN of Mars Hill, MARRACHÉ of Waterville, McLAUGHLIN of Cape Elizabeth, McNEIL of Rockland, MURPHY of Kennebunk, O'BRIEN of Lewiston, PIOTTI of Unity, RICHARDSON of Brunswick, ROSEN of Bucksport, SAMPSON of Auburn, THOMPSON of China, Senators: President DAGGETT of Kennebec, DAVIS of Piscataquis, GAGNON of Kennebec, HATCH of Somerset, LaFOUNTAIN of York, WOODCOCK of Franklin.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 10 MRSA c. 224** is enacted to read:

6 **CHAPTER 224**

8 **ELECTRONIC MAIL SOLICITATION**

10 **§1497. Electronic mail solicitation restricted**

12 **1. Definitions.** As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

14 A. "E-mail" means electronic mail sent or delivered by  
transmission over the Internet.

18 B. "E-mail service provider" means a business or  
organization qualified to do business in this State that  
provides individuals, corporations or other entities the  
ability to send or receive e-mail through equipment located  
in this State or that is an intermediary in sending or  
receiving e-mail.

24 C. "Unsolicited commercial e-mail" means an e-mail, other  
than an e-mail sent at the request of the recipient, sent  
via an e-mail service provider to 2 or more recipients in  
this State with whom the sender does not have an existing  
business relationship for the purpose of:

30 (1) Offering real property, goods or services for sale  
or rent;

34 (2) Conveying information on real property, goods or  
services to solicit sales or purchase;

36 (3) Conveying information on the extension of credit;  
or

40 (4) Promoting or soliciting charitable contributions.

42 "Unsolicited commercial e-mail" does not include an e-mail  
message to which an e-mail service provider has attached an  
advertisement if the e-mail service provider has an agreement  
with the recipient under which the e-mail service provider allows  
the recipient free use of an e-mail account in exchange for  
allowing the e-mail service provider to send such advertisements.

48 **2. Requirements.** A person sending unsolicited commercial  
e-mail shall maintain a valid return e-mail address through which  
50

2 the recipient may provide notice to the sender that the recipient  
3 does not wish to receive any more unsolicited commercial e-mail.

4 **3. Statement.** All unsolicited commercial e-mail must  
5 contain:

6 **A. In the subject line:**

7 (1) The first 4 characters as follows: "ADV:"; and

8 (2) If the unsolicited commercial e-mail contains  
9 information about material that may be viewed only by a  
10 person at least 18 years of age, the first 8 characters  
11 as follows: "ADV:ADLT";

12 **B. A statement informing the recipient of the name of the**  
13 **person or entity from which the unsolicited commercial**  
14 **e-mail originated;**

15 **C. The return e-mail address required by subsection 2; and**

16 **D. A statement informing the recipient that the recipient**  
17 **may use the return e-mail address to notify the sender that**  
18 **the recipient does not want to receive any more unsolicited**  
19 **commercial e-mails from the sender.**

20 **4. Prohibition.** A person receiving notification from a  
21 recipient that the recipient does not wish to receive any more  
22 unsolicited commercial e-mails from that person shall cease to  
23 send unsolicited commercial e-mails to that recipient. If a  
24 recipient is the registered owner of more than one e-mail address  
25 and notifies the sender of unsolicited commercial e-mails to  
26 cease sending unsolicited commercial e-mails to all of the e-mail  
27 addresses registered to that person or entity, the sender shall  
28 cease to send unsolicited commercial e-mails to those addresses.

29 **5. Penalty.** Violation of this chapter is an unfair trade  
30 practice as prohibited by Title 5, section 207. Each unsolicited  
31 commercial e-mail transmission to a recipient in violation of  
32 this chapter constitutes a separate violation. The Attorney  
33 General shall establish procedures for receiving and  
34 investigating complaints of violations of this chapter. The  
35 procedures may include the development of electronic forms,  
36 available over the Internet, by which a person may file a  
37 complaint with the Attorney General alleging a violation of this  
38 chapter.

39 **6. Civil action; recipients.** Notwithstanding Title 5,  
40 section 213, a person who receives a commercial e-mail sent in

2 violation of this chapter may bring an action in an appropriate  
3 state court for either or both of the following:

4 A. An injunction to stop such future e-mails; and

6 B. Recovery of actual damages from each violation or up to  
7 \$250 in damages for each violation, whichever is greater.

8  
9 If the court finds there has been a violation of this chapter,  
10 the court shall award the petitioner reasonable attorney's fees  
11 and costs incurred in connection with the action.

12  
13 If the court finds that the defendant willfully or knowingly  
14 violated this chapter, the court may, in its discretion, increase  
15 the amount of the award to an amount equal to not more than 3  
16 times the amount available under paragraph B.

17 7. Civil action; e-mail service providers. Notwithstanding  
18 Title 5, section 213, an e-mail service provider through whose  
19 service is sent a commercial e-mail in violation of this chapter  
20 may bring an action in an appropriate state court for either or  
21 both of the following:

22  
23 A. An injunction to stop such future e-mails; and

24  
25 B. Recovery of actual damages from each violation or up to  
26 \$1,000 in damages for each violation, whichever is greater.

27  
28 If the court finds there has been a violation of this chapter,  
29 the court shall award the petitioner reasonable attorney's fees  
30 and costs incurred in connection with the action.

31  
32 If the court finds that the defendant willfully or knowingly  
33 violated this chapter, the court may, in its discretion, increase  
34 the amount of the award to an amount equal to not more than 3  
35 times the amount available under paragraph B.

36  
37 8. Immunity. An e-mail service provider may, upon its own  
38 initiative, block the receipt or transmission through its service  
39 of any commercial e-mail that it reasonably believes is or will  
40 be sent in violation of this chapter. An e-mail service provider  
41 is not liable for any action taken in good faith to block the  
42 receipt or transmission through its service of any commercial  
43 e-mail that it reasonably believes is or will be sent in  
44 violation of this chapter.

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## SUMMARY

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4       This bill restricts unsolicited commercial e-mail, defined  
6 as e-mail that is sent for the purpose of advertising or  
8 conveying information about real property, goods or services or  
10 extending credit or soliciting contributions, by requiring the  
12 e-mail to contain a valid return e-mail address maintained by the  
14 sender to which the recipient may respond indicating that the  
16 recipient does not wish to receive further unsolicited commercial  
e-mail from the sender. The restriction does not apply to e-mail  
sent to persons with whom the sender has a prior relationship or  
who have requested the information from the sender. Unsolicited  
commercial e-mail would need to include in the subject line a  
label, as specified, so that recipients are made aware of the  
nature of the e-mail. Each unsolicited commercial e-mail sent to  
a recipient in violation is considered an unfair trade practice.