

# SENATE BILL No. 111

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-20; IC 24-5-21.

**Synopsis:** Unsolicited electronic mail advertising. Prohibits a registered user of an electronic mail service provider from using or causing to be used the provider's equipment located in Indiana in violation of the provider's policy prohibiting or restricting the use of its equipment for the initiation of unsolicited electronic mail advertisements. Prohibits a person from using or causing to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in Indiana in violation of the provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users. Allows an electronic mail service provider whose policy is  
(Continued next page)

**Effective:** July 1, 1999.

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**Howard**

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January 6, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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violated to bring a civil action to recover damages. Allows the court to award reasonable attorney's fees to a prevailing party in that action. Makes delivery of an unsolicited electronic mail advertisement a deceptive act if the advertisement is sent after the recipient has notified the sender not to send further advertisements, the advertisement fails to include certain information, or the advertiser fails to provide a return electronic mail address or toll free telephone number where a recipient of the advertisement may contact the advertiser.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## SENATE BILL No. 111

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-5-20 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 1999]:  
4 **Chapter 20. Unauthorized Use of Electronic Mail Service**  
5 **Provider's Equipment**  
6 **Sec. 1. This chapter does not require an electronic mail service**  
7 **provider to create or modify any of its policies.**  
8 **Sec. 2. This chapter does not limit or restrict any of the**  
9 **following:**  
10 (1) **The rights of an electronic mail service provider under 47**  
11 **U.S.C. 230(c)(1).**  
12 (2) **Any decision of an electronic mail service provider to**  
13 **permit or to restrict access to or use of its system or any**  
14 **exercise of its editorial function.**  
15 (3) **The remedies granted to an electronic mail service**



- 1 provider or any other person by any other law.
- 2 **Sec. 3.** As used in this chapter, "electronic mail advertisement"  
3 means an electronic mail message, the principal purpose of which  
4 is to promote, directly or indirectly, the sale or other distribution  
5 of real property, personal property, services, or an extension of  
6 credit to the recipient.
- 7 **Sec. 4.** As used in this chapter, "electronic mail service  
8 provider" means a business or organization qualified or registered  
9 to do business in Indiana that provides registered users the ability  
10 to send or receive electronic mail through equipment located in  
11 Indiana and that is an intermediary in sending or receiving  
12 electronic mail.
- 13 **Sec. 5.** As used in this chapter, "initiation" of an unsolicited  
14 electronic mail advertisement refers to the action by the initial  
15 sender of the electronic mail advertisement. The term does not  
16 refer to the actions of any intervening electronic mail service  
17 provider that may handle or retransmit the electronic message.
- 18 **Sec. 6.** As used in this chapter, "registered user" means an  
19 individual or any other person that maintains an electronic mail  
20 address with an electronic mail service provider.
- 21 **Sec. 7.** As used in this chapter, "unsolicited electronic mail  
22 advertisement" means an electronic mail advertisement that meets  
23 both of the following requirements:
- 24 (1) It is addressed to a recipient with whom the initiator does  
25 not have an existing business or personal relationship.
- 26 (2) It is not sent at the request of or with the express consent  
27 of the recipient.
- 28 **Sec. 8.** An electronic mail service provider may bring a civil  
29 action against a registered user of the electronic mail service  
30 provider that uses or causes to be used the electronic mail service  
31 provider's equipment located in Indiana in violation of the  
32 electronic mail service provider's policy prohibiting or restricting  
33 the use of its service or equipment for the initiation of unsolicited  
34 electronic mail advertisements.
- 35 **Sec. 9.** An electronic mail service provider may bring a civil  
36 action against a person that uses or causes to be used, by initiating  
37 an unsolicited electronic mail advertisement, an electronic mail  
38 service provider's equipment located in Indiana in violation of the  
39 electronic mail service provider's policy prohibiting or restricting  
40 the use of its equipment to deliver unsolicited electronic mail  
41 advertisements to its registered users.
- 42 **Sec. 10.** In a civil action under section 8 or 9 of this chapter, the

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1 electronic mail service provider must prove that before the alleged  
2 violation, the defendant had actual notice of both of the following:

3 (1) The electronic mail service provider's policy on unsolicited  
4 electronic mail advertising.

5 (2) The fact that the defendant's unsolicited electronic mail  
6 advertisements would use or cause to be used the electronic  
7 mail service provider's equipment located in Indiana.

8 **Sec. 11.** In a civil proceeding under section 8 or 9 of this chapter,  
9 an electronic mail service provider is entitled to recover the greater  
10 of either:

11 (1) the actual monetary loss suffered by that provider by  
12 reason of the violation; or

13 (2) liquidated damages of fifty dollars (\$50) for each  
14 electronic mail message initiated or delivered in violation of  
15 section 8 or 9 of this chapter;

16 up to a maximum of twenty-five thousand dollars (\$25,000) per  
17 day.

18 **Sec. 12.** In a civil proceeding under section 8 or 9 of this chapter,  
19 the court may award costs and reasonable attorney's fees to a  
20 prevailing party.

21 SECTION 2. IC 24-5-21 IS ADDED TO THE INDIANA CODE AS  
22 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 1999]:

24 **Chapter 21. Unsolicited Electronic Mail**

25 **Sec. 1.** This chapter applies if an unsolicited electronic mail  
26 advertisement is delivered to a person in Indiana.

27 **Sec. 2.** This chapter does not apply to the actions of any  
28 intervening electronic mail service provider that only handles or  
29 retransmits an electronic mail advertisement.

30 **Sec. 3.** The definitions in IC 24-5-19 apply throughout this  
31 chapter.

32 **Sec. 4.** A person that initiates an unsolicited electronic mail  
33 advertisement shall establish a:

34 (1) toll free telephone number; or

35 (2) valid sender operated return electronic mail address;

36 where the recipient of the electronic mail advertisement may call  
37 or send electronic mail to notify the sender not to electronically  
38 mail any further electronic mail advertisements.

39 **Sec. 5.** A person that initiates an unsolicited electronic mail  
40 advertisement shall include a statement informing the recipient of:

41 (1) the toll free telephone number that the recipient may call;

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1           (2) a valid return address that the recipient may electronically  
 2           mail;  
 3           to notify the sender not to electronically mail the recipient any  
 4           further electronic mail advertisements. The statement must be the  
 5           first text in the body of the message and be of the same size type as  
 6           the majority of the text of the message. The statement may require  
 7           only that the recipient indicate by telephone or electronic mail that  
 8           the recipient does not want further electronic mail advertisements  
 9           sent to the electronic mail address or addresses specified by the  
 10          recipient.

11          Sec. 6. Upon notification not to send any further unsolicited  
 12          electronic mail advertisements, a person may not initiate or cause  
 13          the initiation of any additional electronic mail advertisements to:

- 14           (1) the recipient sending the notification; or  
 15           (2) the recipients who have employer provided and employer  
 16           controlled electronic mail addresses, if the employer that is  
 17           the registered owner of more than one (1) electronic mail  
 18           address notifies the person not to electronically mail  
 19           unsolicited electronic mail advertisements to the employees  
 20           who use the employer's electronic mail addresses.

21          Sec. 7. (a) The subject line of each unsolicited electronic mail  
 22          advertisement message must include "ADV:" as the first four (4)  
 23          characters.

24          (b) The subject line of each unsolicited electronic mail  
 25          advertisement that contains information about personal property,  
 26          real property, services, or an extension of credit that may be  
 27          viewed, purchased, rented, leased, or held in possession only by an  
 28          individual who is at least eighteen (18) years of age or an entity  
 29          other than an individual, or both, must include "ADV:ADLT" as  
 30          the first eight (8) characters.

31          Sec. 8. A person that violates this chapter commits a deceptive  
 32          act under IC 24-5-0.5-4 and is subject to the remedies and penalties  
 33          set forth in IC 24-5-0.5.

34          SECTION 3. [EFFECTIVE JULY 1, 1999] IC 24-5-20 and  
 35          IC 24-5-21, both as added by this act, apply only to causes of action  
 36          that accrue after June 30, 1999.

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