



Four Midwestern states enact new anti-spam laws in 2003

by Matthew Kemeny
for Stateline Midwest

On the heels of a legislative trend that saw many states create do-not-call lists for telemarketers, another consumer protection/privacy movement has spread quickly in state capitols across the Midwest and nation: governmental regulation of unsolicited e-mail, or “spam.”

The issue’s popularity with lawmakers demonstrates its widespread resonance with constituents. The rise in Internet use has made e-mail a popular commercial marketing tool, and this proliferation of spam has caused some of the same concerns associated with telemarketing. Whether they are viewed as an annoyance, a means to conduct deceptive sales practices or both, these two types of unsolicited communication have become common targets for lawmakers.

According to David E. Sorkin, a law professor at The John Marshall Law School Center for Information Technology and Privacy Law, at least 35 states now have some kind of spam legislation on the books (a state-by-state summary of the laws is available at www.spamlaws.com). This year, four Midwestern states — Indiana, Michigan, Illinois and North Dakota — passed new bills designed to curb or regulate unsolicited commercial e-mail.

A measure passed in Indiana this year will require the senders of spam to tag the messages and will allow recipients to stop receiving the advertisements. Indiana Rep. Jonathan Weinzapfel, a Democrat from Evansville, says the law is a “logical progression from the state’s ‘no call’ list that protects Hoosiers from telemarketers.”

“This law makes it easier for a person to determine if he or she is getting an ad via e-mail, which makes it easier to decide whether or not to open the mail,” he adds. “You will be able to tell the person sending the mail that you don’t want to get these messages anymore. If they persist, you can take them to court.”

Under the new law, spam senders could be fined up to \$500 per unsolicited e-mail for not honoring the requests of individual recipients. In addition, unsolicited e-mail now must be tagged in the subject line by using “ADV” for commercial or “ADV:ADLT” for pornography or credit offers. Senders also must show the origin of the mail and are forbidden from using a third-party domain name without permission.

In Michigan this year, lawmakers considered creating a “do-not-spam” list, similar in intent to the “do-not call” registries for telemarketers enacted by many states and eventually the federal government. Under the plan, individuals could place their electronic mail addresses on a “do-not-spam” list that would have to be honored by potential senders.

Federal legislation to create such a registry also

The case against unsolicited commercial e-mail

The Coalition Against Unsolicited Commercial Email believes spam is a threat to the viability of Internet e-mail and a danger to electronic commerce. Here are some key points CAUCE makes in its argument against spam.

- **Cost-shifting** — Unsolicited e-mail can boost bandwidth costs by causing Internet service providers to either raise rates or increase their bandwidth. It also takes time for an Internet service provider to process spam, which can affect access, speed and reliability for users.
- **Fraud** — Spammers utilize tricks and deception (such as the use of a third party) to lure recipients to open the messages.
- **Waste of Others’ Resources** — When a spammer sends an e-mail message to a million people, it is carried by numerous other systems en route to its destination, shifting cost away from the originator. Also, as a result, unsolicited e-mail creates inefficiencies on the Internet.
- **Displacement of Normal E-mail** — E-mail has become a critical business tool, but spam can and will overwhelm one’s e-mail box. The eventual effect may be to eliminate e-mail as a useful and effective communication tool.
- **Annoyance Factor** — A person’s e-mail address is not public domain, and he or she should have better control over what is in the e-mail box.

has been introduced. Proponents say a state or national list would more successfully stop the delivery of unwanted e-mail than the laws passed so far around the country. Some, though, argue that this kind of list would be unworkable, inhibit the activity of legitimate businesses or other groups, and not effectively curb deceptive sales practices.

The Michigan bill signed into law ultimately did not include a do-not-spam registry. Instead, like the Indiana measure, the law requires that spam senders include a subject line informing recipients that they have received unsolicited commercial e-mail. In addition, certain contact information and a valid method for consumers to opt out of receiving future e-mails must be included. The sender also is required to establish and maintain the necessary policies and records to ensure that a recipient who opted out of receiving e-mail solicitations does not receive future spam.

Violation of the Michigan law will result in a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$10,000. A civil action can be brought by the attorney general’s office or by the recipient.

“Spam accounts for nearly half of all e-mail,” says Michigan Rep. Bill Huizenga, who sponsored the Michigan House measure. “I have heard from countless people, and I know from personal experience, that deleting unwanted e-mail is a time-consuming burden.”

The Republican from Zeeland adds that spam reduces business productivity and can introduce unsolicited pornography and harmful viruses into computers.

Illinois’ new law also will require subject lines for advertising, including one for pornographic spam (like other state measures, it will read “ADV:ADLT” for adult-oriented messages). Fines for a violation of the new law will be \$10 per e-mail or \$25,000 for each day of the

violation, whichever is lower. The measure also requires senders to list a toll-free telephone number or return address so that recipients can “opt out” of future messages. North Dakota’s 2003 legislation contains similar provisions. Under its new consumer protection law, “damages to the recipient of a commercial electronic mail message ... are \$500, or actual damages, whichever is greater.”

Need to do more?

One of the biggest concerns about unsolicited e-mail is the possibility that it can lead to children accessing, either intentionally or unintentionally, adult-oriented Web sites. As mentioned above, much of the new spam legislation attempts to address these concerns by requiring that pornography-related e-mails make the content known in the subject line.

States have other tools at their disposal as well. For example, earlier this year, the Illinois attorney general’s office filed suit against two companies after receiving numerous phone calls from concerned parents. Among their complaints was the fact that their children were opening up innocent-looking spam that connected to online adult Web sites. In some cases, the companies then billed the consumer for logging on to the site.

The work of attorneys general and state lawmakers clearly illustrates a concern about spam and a willingness to regulate it. But have their efforts been effective? Privacy advocates note that people are continuing to receive more and more unsolicited e-mails. They say state statutes are sometimes too lax on penalties and even give legitimacy to the senders of spam.

Because technical solutions, such as anti-spam software, have not proven satisfactory to Internet users, there will be mounting pressures on lawmakers to do more. Until strong federal legislation is enacted, it will be left to state policymakers to take a lead role, much like they did with previous efforts to regulate telemarketers. ✨