

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 w/CS Electronic Message

SPONSOR(S): Sobel

TIED BILLS: **IDEN./SIM. BILLS:** SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Telecommunications (Sub)	7 Y, 0 N	Holt	Liepshutz
2) Business Regulations	29 Y, 4 N w/CS	Holt	Liepshutz
3) Commerce			
4) Judiciary			
5) Appropriations			

SUMMARY ANALYSIS

The bill will prohibit a person from transmitting, conspiring to transmit, or assisting in transmitting a commercial electronic mail message from a computer within the state to a resident within the state if that message uses a third party's Internet domain name without permission, misrepresents the message point of origin, or contains false or misleading information on the subject line. The bill provides injunctive or other equitable relief and authorizes the court to award damages. It also provides that a computer service may block the receipt or transmission of a message upon reasonable belief that the message is or will be sent in violation of the act.

The bill appears to have an indeterminate fiscal impact.

The bill takes effect July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1211b.br.doc

DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

According to Internet Service Providers (ISP) research, "Spam" is a term generally used to describe mass, unsolicited advertising or solicitations sent through electronic mail (e-mail), Usenet posting, or other online means to Internet users. Although online advertising and marketing has come to be generally accepted on the Internet, and provides revenue that allows for the delivery of free content and information, spam is widely considered to be a nuisance to Internet users and a violation of Internet etiquette.

Notwithstanding the on-line community's negative response to spamming, the quantity of these unsolicited e-mail advertisements has increased dramatically. Further, spam thrives despite its annoyance, in part because spammers face virtually no economic constraints. Sending e-mail is so cheap that spammers can turn a profit even if only one in 100,000 recipients responds. Certain ISPs have reported that over 700,000 messages per day are directed to their customers from companies who specialize in spamming. In response, a number of ISPs, including the Microsoft Network (MSN), have implemented filters to reject messages from certain Internet addresses. The filter in MSN services, such as Hotmail, allows users to block individual e-mail messages or messages sent from a particular domain address.

Given the prevalence of advertising and commercial messaging on the Internet, the challenge is to allow vendors to provide consumers with notice of products that are likely to be of interest to them, but to eliminate unwanted spam that burdens consumers and ISPs, and undermines network reliability and stability.

The bill creates sections 668.20, 668.21, 668.22, F.S., relating to commercial electronic mail messages, in chapter 668, Electronic Commerce. The following definitions are provided as used in each section:

- (1) "Commercial electronic mail message" means an electronic mail message sent for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.
- (2) "Electronic mail" means an electronic message or computer file containing an image of a message that is transmitted between two or more computer or electronic terminals and includes electronic messages that are transmitted within or between computer networks.
- (3) "Electronic mail service provider" means any person who:
 - (a) Is an intermediary in sending or receiving electronic mail; and
 - (b) Provides to end users of electronic mail services the ability to send or receive electronic mail.

(4) "Established business relationship" means a prior or existing relationship formed by a voluntary communication between a person or entity and the recipient, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or use by the recipient regarding products or services offered by such person or entity.

(5) "Unsolicited commercial electronic mail message" means a commercial electronic mail message sent without the consent of the recipient by a person with whom the recipient does not have an established business relationship. "Unsolicited commercial electronic mail message" does not include electronic mail messages the sender of which:

- (a) Is an organization using electronic mail to communicate exclusively with its members;
- (b) Is an organization using electronic mail to communicate exclusively with its employees or contractors;
- (c) Has the consent of the recipient; or
- (d) Has an established business relationship with the recipient.

The bill prohibits a person from transmitting a commercial electronic mail message that falsifies electronic mail transmission information or other routing information for that message, or contains false or misleading information in the subject line.

The bill prohibits a person from sending a commercial electronic mail message to a third party's internet address or domain name, without the consent of the third party, for the purpose of transmitting the message in a way that makes it appear that the third party was the sender of such mail.

If a person sends an unsolicited commercial electronic mail message, they must use "ADV:" as the first four characters of the subject line, and all messages must have a mechanism that allows recipients to easily remove themselves, at no cost, from the senders address list in order to avoid future messages.

A person whose property or person is injured due to a violation of this act may recover any damages sustained, costs of suit, and attorney's fees. Damages include loss of profits. An injured person may elect, in lieu of actual damages, to recover \$10 for each and every unsolicited commercial electronic mail message transmitted in violation of this act or \$500 a day, whichever is less. An electronic mail service provider may also recover damages for injuries sustained.

The court may, in its discretion, conduct all legal proceedings in such a way so as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved.

An electronic mail service provider does not violate this act and an injured party does not have a cause of action against such a provider, due to the fact that the provider acts as an intermediary between sender and recipient, provides transmission of unsolicited commercial electronic mail messages over the provider's computer network/facilities, or takes voluntary action in good faith to block the receipt of transmissions that are believed to be in violation of this act.

The bill takes effect July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Commercial electronic mail message; definitions.

Section 2. Commercial electronic mail message; prohibitions.

Section 3. Commercial electronic mail message; civil relief; damages.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Public Service and Office of State Technology anticipate no impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of State Technology (OST) perceives an indeterminate impact may come from investigating and prosecuting violators. However, since the bill provides solely for equitable, injunctive, or monetary damages to be awarded by the court to a person, defined as an individual, corporation, partnership, or association, it is uncertain whether any governmental entity will have any authority to prosecute or investigate complaints pursuant to this legislation. Consequently, the bill may not have any impact upon state and local government..

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2003, the Committee on Business Regulation adopted the committee substitute to HB 1211. The committee substitute does not limit unsolicited commercial electronic mail message prohibitions to transmissions initiated from a computer located in this state and does not specify that the recipient must be within the state of Florida. The original bill specifically prohibited transmissions from computers located in this state to e-mail addresses of Florida residents.

The bill no longer refers to conspirators or those who assist in transmitting messages as violators of this act. The bill also modifies the damages and other costs that are recoverable to injured persons, and no longer addresses injunctive relief. This bill provides court discretion in providing secrecy and security of the computer, computer network, computer data, computer program, and computer software involved.