

## HCS HB 228 -- UNSOLICITED COMMERCIAL ELECTRONIC MAIL

SPONSOR: Dempsey (Pearce)

COMMITTEE ACTION: Voted "do pass" by the Committee on Job Creation and Economic Development by a vote of 20 to 0.

This substitute requires the Attorney General to develop and maintain a list of consumers who have registered their objection to receiving unsolicited commercial e-mail. Information contained in the database can only be used to enforce this law and is not considered public. This database must be operational by January 1, 2005. Unsolicited e-mail cannot be sent to subscribers in the database after January 1, 2005.

Anyone who sends commercial e-mail to any consumer in Missouri must identify themselves clearly at the beginning of the message.

Telecommunications utilities or Internet service providers that carry unsolicited e-mail initiated by others are not liable for violations.

E-mail sent to a subscriber with whom the sender has had an ongoing business relationship at some point during the last 12 months is not considered unsolicited electronic mail. Neither are e-mails sent by licensed professionals or tradesmen attempting to set appointments for services related to their trade or profession. E-mail sent from the primary business's parent company or a subsidiary company is considered unsolicited and is in violation of this law.

Ongoing business relationships include e-mail in response to an inquiry in which the subscriber has provided an e-mail address, e-mail sent on the basis of an ongoing business relationship that has not been terminated by the subscriber, or e-mail from a separate entity with which the subscriber has an established business relationship.

If child pornography web sites can be accessed through a particular Internet service provider's system, a subscriber to that system can notify the Attorney General of this access. The Attorney General is then required to notify the provider of the child pornography sites that can reportedly be accessed through its system. The provider must block access to reported child pornography sites within six months. Failure to do so is a violation of this law.

The Attorney General can initiate proceedings against violators and impose injunctions and civil penalties of up to \$5,000 for each violation. Violators are also subject to penalties provided

in merchandising practices law. There is a two-year statute of limitations. State courts can exercise personal jurisdiction over nonresidents.

FISCAL NOTE: Estimated Net Cost to Merchandising Practices Revolving Fund of \$0 in FY 2004, \$190,459 to \$490,459 in FY 2005, and \$165,477 to \$465,477 in FY 2006.

PROPONENTS: Supporters say that the bill will prohibit unwanted commercial e-mail, or "spam." This will not only reduce frustration for e-mail users, it will also reduce fraudulent and deceptive use of e-mail.

The intent is to create a "No Spam" list similar to the No Call list currently maintained by the Attorney General's office. The No Call list is a tool consumers can use to reduce the number of telemarketing calls they receive, and it has been successful. The No Spam list would work in a similar fashion. Its intent is not to disrupt current business relationships or interfere with personal e-mail messages from senders known to the recipient.

Another benefit to the No Spam list is that it can reduce the incidences of pornographic e-mail being sent to children or to individuals who do not want it. It can also reduce the likelihood of senior citizens being taken advantage of over the Internet.

The success of the No Call list has led to the recovery of fines that are sufficient for the list to pay for itself. Supporters of the bill anticipate that a No Spam list would also be self-funding through fines that would be received from violators. Therefore, the No Spam list would eventually not require state funding. State funding would be required in the beginning to create the database and investigate claims of violations. This, and any other future state funding, would come from the Merchandising Practices Revolving Fund. This is a dedicated fund that is not a part of general revenue.

Testifying for the bill were Representatives Smith (14) and Graham; Office of the Attorney General; ThoughtProcess.net; Socket Holdings Corporation; and Missouri Family Network.

OPPONENTS: Those who oppose the bill say that this legislation does not adequately ensure that current business relationships will not be disturbed. Enforcement of the legislation will be difficult because many mass distribution e-mails come from overseas, making the violators difficult to track down or prosecute. Opponents are also concerned about the No Spam database being sold by the Attorney General's office to individuals or companies intending to use it as a mass

distribution e-mailing list or having it simply fall into the wrong hands.

Testifying against the bill were Missouri Chamber of Commerce; Missouri Association of Realtors; Missouri Press Association; Mortgage Bankers Association; Missouri Financial Services Association; National Association of Independent Insurers; Virtumundo, Inc.; Internet Alliance; and Network Advertising Institute.

Alice Hurley, Legislative Analyst