

HS HCS HB 228 -- UNSOLICITED COMMERCIAL ELECTRONIC MAIL (Pearce)

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. Any entity who buys the database from the Attorney General can distribute it to its employees or independent contractors. Unsolicited e-mail cannot be sent to subscribers in the database after January 1, 2005.

Unsolicited commercial electronic mail is defined as a commercial e-mail message sent without the consent of the recipient. E-mails sent from a parent company or subsidiary of the primary business are considered "unsolicited." The definition excludes the following kinds of e-mail from the definition:

- (1) E-mail sent in response to an inquiry from a subscriber who has requested information and provided an e-mail address;
- (2) E-mail sent to a subscriber with whom the sender has had a business relationship at some point during the last 12 months;
- (3) E-mail sent by licensed professionals or tradesmen attempting to set an appointment for services related to their trade or profession;
- (4) E-mail sent by banks, farm credit services, or credit unions;
- (5) E-mail sent to a subscriber with whom the sender has a personal relationship; and
- (6) E-mail forwarded to a third party without the knowledge of the original sender.

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 legal entity with which the subscriber has an established business relationship.

If the Attorney General determines that a particular web site includes child pornography, he or she must notify the web site operator of the site. If the operator does not remove the pornography from its servers promptly, the Attorney General may seek a judicial order requiring its removal within 30 days. Failure to do so is punishable as contempt of court and penalties

for promoting child pornography in the first and second degree will apply.

E-mail service providers are not liable if they act as an intermediary between the sender and the recipient of unsolicited commercial e-mail or if they take actions to block the transmission of unsolicited commercial e-mail and notify the Attorney General of commercial e-mail they believe is in 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, but not more than \$25,000 per day. 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.

Anyone who sends commercial e-mail to any consumer in Missouri must identify themselves clearly at the beginning of the message. Anyone sending unsolicited commercial e-mail must use the characters "ADV:" at the beginning of the subject line. Anyone sending unsolicited commercial e-mail containing adult material or messages which reference a web site containing adult material must use the characters "XXX:" at the beginning of the subject line.

FISCAL NOTE: Estimated Net Cost to Merchandising Practices Revolving Fund of \$0 in FY 2004, \$256,931 to \$556,931 in FY 2005, and \$216,092 to \$516,092 in FY 2006.