

CCS SCS HS HCS HB 228 -- UNSOLICITED COMMERCIAL ELECTRONIC MAIL

This bill makes it illegal to:

- (1) Send unsolicited commercial electronic mail (e-mail) to any subscriber who has asked the sender not to send any additional unsolicited e-mail;
- (2) Send unsolicited commercial e-mail without using "ADV:" as the first four characters in the subject line or "ADV:ADLT" if the message contains adult material; or
- (3) Use a false identity or false or misleading information in the subject line of any commercial e-mail message.

The Attorney General may initiate proceedings against violators, impose injunctions and civil penalties of up to \$5,000 for each violation up to a maximum of \$25,000 per day, and seek additional relief. Violators are also subject to penalties provided in merchandising practices law. Civil penalties recovered will be credited to the Merchandising Practices Revolving Fund. There is a two-year statute of limitations, and state courts can exercise personal jurisdiction over nonresidents.

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

The bill defines "unsolicited commercial electronic mail" 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 not considered unsolicited as long as the secondary business shares the same brand name as the primary business. The definition excludes the following kinds of e-mail:

- (1) E-mail sent in response to an inquiry from a subscriber who has requested information and has 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 24 months. This includes a parent or subsidiary company of the primary business if they share the same brand name;
- (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.

The Attorney General is required to investigate any report that child pornography is contained on a particular web site. If there is probable cause to believe the web site does, in fact, contain child pornography, the Attorney General will notify the web site operator, in writing, of the material in question. If the web site operator removes the material within five days of receiving notice, he or she will be immune from civil liability. If the web site operator does not remove the alleged pornography, the Attorney General may seek an injunction to remove the material from the web site operator's server.