

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 provides legislative intent relating to unsolicited e-mail and provides definitions for related terms. The bill prohibits a person from transmitting, conspiring to transmit, assisting in transmitting a commercial e-mail from a computer located in this state to an e-mail address that the sender knows, or has reason to know, is held by a Florida resident if the message uses without permission a third party's Internet domain name, misrepresents the message point of origin, or contains a false or misleading subject line. A person recognizes a Florida resident as the recipient of a commercial e-mail if that information is available upon request from the registrant of the Internet domain name contained in the recipient's e-mail address.

Notwithstanding any other remedy provided by law, the bill provides for injunctive or other equitable relief for violation of its provisions. A court may award damages of \$500 to a recipient of a commercial e-mail, or \$1,000 to an interactive computer service, that suffers damage as a result of violation of the bill provisions. Moreover, a court may in lieu award actual damages, whichever is greater.

The bill further 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 takes effect July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Prohibits a person from transmitting, conspiring to transmit, or assisting in transmitting a commercial e-mail 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 point of origin of the message, or contains false or misleading information on the subject line. The bill also 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.

Section 2. 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