

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 538

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Prohibitions” and substitute “Unauthorized, False, or Misleading Information”; in line 4, after “initiate” insert “, or assisting in”; in the same line, after “of” insert “certain”; strike beginning with “under” in line 4 down through “circumstances” in line 7 and substitute “that is from a certain computer or is sent to a certain electronic mail address and that contains unauthorized, misleading, or false information; specifying a certain presumption; authorizing an interactive computer service provider to block certain commercial electronic mail in a certain manner; prohibiting a certain interactive computer service provider from being held liable for certain actions; specifying the scope for certain provisions; providing that a person who violates this Act is liable to certain persons for attorney's fees and certain damages”; in line 7, strike “a”; in the same line, strike “term” and substitute “terms”; and in line 11, strike “13-319” and substitute “14-2901, 14-2902, and 14-2903 to be under the new subtitle “Subtitle 29. Commercial Electronic Mail””.

AMENDMENT NO. 2

On page 1, after line 16, insert:

“SUBTITLE 29. COMMERCIAL ELECTRONIC MAIL.”;

in line 17, strike “13-319.” and substitute “14-2901.”; and strike beginning with “SECTION” in line 18 down through “SERVICE” in line 20 and substitute “SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED. (B) (1) “COMMERCIAL ELECTRONIC MAIL” MEANS ELECTRONIC MAIL THAT ADVERTISES REAL PROPERTY, GOODS, OR SERVICES FOR SALE OR LEASE.

(2) “COMMERCIAL ELECTRONIC MAIL” DOES NOT INCLUDE ELECTRONIC MAIL TO WHICH AN INTERACTIVE COMPUTER SERVICE PROVIDER HAS ATTACHED AN ADVERTISEMENT IN EXCHANGE FOR FREE USE OF AN ELECTRONIC MAIL ACCOUNT. (C) (1) “INTERACTIVE COMPUTER SERVICE PROVIDER”

(Over)

MEANS AN INFORMATION SERVICE, SYSTEM, OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVICE. (2) “INTERACTIVE COMPUTER SERVICE PROVIDER” INCLUDES A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND SYSTEMS OPERATED OR SERVICES OFFERED BY A LIBRARY OR EDUCATIONAL INSTITUTION”.

AMENDMENT NO. 3

On page 1, after line 20, insert “14-2902.”; in line 21, strike “(B)” and substitute “(A)”; strike beginning with “APPLIES” in line 21 down through “STATE” in line 24 and substitute “DOES NOT APPLY TO AN INTERACTIVE COMPUTER SERVICE PROVIDER OR A TELECOMMUNICATION UTILITY TO THE EXTENT THAT THE INTERACTIVE COMPUTER SERVICE PROVIDER OR THE TELECOMMUNICATION UTILITY MERELY HANDLES, RETRANSMITS, OR CARRIES A TRANSMISSION OF COMMERCIAL ELECTRONIC MAIL”; in line 25, strike “(C)” and substitute “(B)”; in the same line, strike “OR” and substitute “THE TRANSMISSION,”; in line 26, after “TRANSMISSION” insert “, OR ASSIST IN THE TRANSMISSION”; in the same line, strike “A”; in the same line, strike “MESSAGE”.

On page 2, strike beginning with “MISREPRESENTS” in line 1 down through “(2)” in line 4 and substitute “IS FROM A COMPUTER IN THE STATE OR IS SENT TO AN ELECTRONIC MAIL ADDRESS THAT THE SENDER KNOWS OR SHOULD HAVE KNOWN IS HELD BY A RESIDENT OF THE STATE; AND (2) (I) USES A THIRD PARTY'S INTERNET DOMAIN NAME OR ELECTRONIC MAIL ADDRESS WITHOUT THE PERMISSION OF THE THIRD PARTY; (II); in line 4, strike “IN” and substitute “ABOUT”; in lines 4 and 5, strike “SUBJECT LINE” and substitute “ORIGIN OR THE TRANSMISSION PATH OF THE COMMERCIAL ELECTRONIC MAIL; OR 3. CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT LINE THAT HAS THE CAPACITY, TENDENCY, OR EFFECT OF DECEIVING THE RECIPIENT”; and strike in their entirety lines 6 through 10, inclusive, and substitute: “(C) A PERSON IS PRESUMED TO KNOW THAT THE INTENDED RECIPIENT OF COMMERCIAL ELECTRONIC MAIL IS A RESIDENT OF THE STATE IF THE INFORMATION IS AVAILABLE ON REQUEST FROM THE REGISTRANT OF THE INTERNET DOMAIN NAME CONTAINED IN THE RECIPIENT'S ELECTRONIC MAIL ADDRESS. (D) AN INTERACTIVE COMPUTER SERVICE PROVIDER: (1) MAY BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS

INTERACTIVE COMPUTER SERVICE OF COMMERCIAL ELECTRONIC MAIL THAT IT REASONABLY BELIEVES IS OR WILL BE SENT IN APPARENT VIOLATION OF THIS SECTION; AND (2) MAY NOT BE HELD LIABLE FOR AN ACTION UNDER ITEM (1) OF THIS SUBSECTION THAT IS VOLUNTARILY TAKEN IN GOOD FAITH.
14-2903.

A PERSON WHO VIOLATES THIS SUBTITLE IS LIABLE FOR REASONABLE ATTORNEY'S FEES AND FOR DAMAGES: (1) TO THE RECIPIENT OF COMMERCIAL ELECTRONIC MAIL, IN AN AMOUNT EQUAL TO THE GREATER OF \$500 OR THE RECIPIENT'S ACTUAL DAMAGES; (2) TO THE THIRD PARTY WITHOUT WHOSE PERMISSION THE THIRD PARTY'S INTERNET DOMAIN NAME OR ELECTRONIC MAIL ADDRESS WAS USED, IN AN AMOUNT EQUAL TO THE GREATER OF \$500 OR THE THIRD PARTY'S ACTUAL DAMAGES; AND (3) TO AN INTERACTIVE COMPUTER SERVICE PROVIDER, IN AN AMOUNT EQUAL TO THE GREATER OF \$1,000 OR THE INTERACTIVE COMPUTER SERVICE PROVIDER'S ACTUAL DAMAGES.”.