

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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DESCRIPTION

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Dennis Halliwell
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10/3/03
Date

2003 HOUSE JUDICIARY

HB 1388

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388

House Judiciary Committee

Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
1		xx	15.5-end
2	xx		0-5
Committee Clerk Signature <i>D. Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1388.

Rep. Warner: Introduced the bill (see attached testimony), support.

Chairman DeKrey: Thank you. Any questions.

Rep. Eckre: On pg. 5, talks about a toll free number - how would those companies know about North Dakota laws.

Rep. Warner: They have trade associations that they belong to, that gets the word. This legislation is being adopted by a majority of states.

Rep. Eckre: Say if a new company started up in New Mexico, they would be aware of these types of laws, a majority.

Rep. Warner: Yes.

Rep. Klein: You've got some language in here relating to federal law and an expiration date, what is the status of the federal legislation.

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1388
Hearing Date 2-10-03

Rep. Warner: I'm afraid I don't know. Senator Krauter is following my testimony and he has more information on that.

Chairman DeKrey: Thank you. Further testimony in support.

Sen. Krauter: (see attach testimony and amendments) Support. In regard to the question asked by Rep. Klemin, in 1999, legislation was proposed in the US House of Reps. and nothing was acted on. No legislation has been proposed yet this year.

Rep. Grande: How do you know if individual or business is spamming you.

Sen. Krauter: That is our biggest challenge. It is possible that an ISP can track it; especially the get rich quick schemes, all of these need to put an ADV and toll free # for the person to opt-out.

Rep. Grande: Need to address the problem - will it give educational component with this bill.

Sen. Krauter: No.

Rep. Eckre: If most of the companies are overseas, how is it working in other states to shut them down.

Sen. Krauter: There have been lawsuits filed in other states.

Rep. Klemin: This isn't going to stop spam, but stop misleading subject lines?

Sen. Krauter: Yes, can't stop spam, if it comes, you have to respond back by opting out by e-mail or with the toll free number.

Rep. Klemin: I have been told not to opt-out because it confirms your address for the spammer and lets them continue spamming you.

Sen. Krauter: We are trying to get a consistent pattern with the ADV, to let the person know it is an advertisement.

Rep. Klemin: What does ADV stand for.

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10/3/03
Date

Page 3
House Judiciary Committee
Bill/Resolution Number HB 1388
Hearing Date 2-10-03

Sen. Krauter: Advertisement.

Rep. Klemin: Some messages say ADULT OR ADLT? This bill is using ADULT, is it going to make a difference, be in violation?

Sen. Krauter: When we put the bill together, we went with what a majority of the states use, and they use ADULT.

Rep. Klemin: An injured person can recover damages caused by a violation, are we talking about a ND company spamming a ND person, or are we talking about a company located anywhere in the world.

Sen. Krauter: North Dakota e-mails received in North Dakota is what bill covers.

Rep. Klemin: If I'm injured, can I sue someone in Germany in North Dakota state district court, or only if someone in Bismarck is spamming me.

Sen. Krauter: You are limited to within the state of North Dakota.

Rep. Klemin: Most e-mail spam I get is from out-of-state.

Sen. Krauter: I'm going to have to doublecheck that for you.

Rep. Galvin: In the first paragraph of your testimony, you talk about federal law, and how the states have taken the lead, by enacting this legislation, will the federal government eventually enact law.

Sen. Krauter: In 2002, there were two pieces of legislation introduced at the federal level, and there hasn't been any legislation introduced yet, but will probably be.

Rep. Boehning: When you open up the e-mails, and it doesn't have the ADV in the subject line, so you are looking at something and pretty soon you have 40 or 50 other web sites come up and make it hard to close out of the program.

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10/3/03
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Page 4
House Judiciary Committee
Bill/Resolution Number HB 1388
Hearing Date 2-10-03

Sen. Krauter: E-mails don't open up web sites. You have to click on something in the e-mail message to activate the web sites to come up.

Rep. Klemm: So the idea here would be to use the internet e-mail software to automatically delete messages with ADV.

Sen. Krauter: Yes.

Rep. Delmore: Do other states have penalties for these laws.

Sen. Krauter: There is a penalty in these states.

Chairman DeKrey: Thank you.

Rep. Nancy Johnson: Support. We want to require them to label ADV. We had ITD take a look at this legislation and they supported it.

Chairman DeKrey: Thank you.

Wayne Stenehjem, Attorney General: We would have to look at certain first amendment issues. We haven't looked into this bill in detail yet.

Rep. Eckre: Do you like this bill.

Mr. Stenehjem: I haven't gone through it, section by section, so I can't answer that question. I just want to offer assistance to comb through and look at what might work.

Rep. Eckre: What do you do when the upset parent comes to you and brings the e-mails; what can your office do.

Mr. Stenehjem: We have a criminal section, a trained individual from DCI who looks through computer hard drives, for example, we concentrate on child pornographers. We work with the US state's attorney and FBI and in those cases, where it is child pornography, we have a pretty

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10/3/03
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Page 5
House Judiciary Committee
Bill/Resolution Number HB 1388
Hearing Date 2-10-03

good chance of getting them prosecuted. But it would be helpful to have some kind of tool. We need to start somewhere and a bill like this could help.

Rep. Klemin: Who would I sue, I got the impression that the commercial spam would have to originate here in North Dakota for me to bring an action, vs. the spam coming from New York, would you use NY law.

Mr. Stenehjem: No, I don't know. I came here to listen to the testimony, and offer help if needed. I can't really testify about the specifics of the statute you have in front of you. Other statutes, when an ISP is used to deliver other people's spam to a ND resident, we can utilize the long arm statute and get jurisdiction over the people who usually are out-of-state in a North Dakota court.

Rep. Klemin: Do you have any recommendation as to whether we should put some type of long-arm statute-type provision in the bill. Because right now, the long arm statute isn't even a statute, it is part of the rules of civil procedure.

Mr. Stenehjem: Which means it properly would have to be a rule of procedure. I will be happy to go through the specifics and work with anybody on the committee to craft a statute.

Chairman DeKrey: Thank you.

Rep. Kretschmar: Under this bill - is it possible to tack this on under a commerce laws?

Mr. Stenehjem: I don't know about the specifics of this bill, but that is one issue you need to be very careful about when enacting a statute, to make sure you don't have a commerce clause problem. There was a case in Washington.

Rep. Kretschmar: Was that case in state or federal court.

Mr. Stenehjem: State court.

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10/3/03
Date

Page 6
House Judiciary Committee
Bill/Resolution Number HB 1388
Hearing Date 2-10-03

Chairman DeKrey: Thank you. Any further testimony in support? Opposition? We will close the hearing.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
3	xx		43.7-49.5
Committee Clerk Signature <i>D. Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: What are the committee's wishes in regard to HB 1388.

Rep. Kingsbury: I move the Krauter amendments, .0201.

Rep. Maragos: Seconded.

Voice vote: Carried.

Rep. Delmore: I move a Do Pass as amended.

Rep. Maragos: Seconded.

11 YES 2 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

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