

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0513/1dn
MDK:cjs:pg

October 3, 2000

Representative Foti:

Please review this draft, which is identical to 1999 LRBs0354/2, very carefully to make sure that it achieves your intent.

Note that the bill may be subject to an attack that it violates the interstate commerce clause of the federal constitution because it applies to interstate electronic mail solicitations that are sent or received by persons in this state. In general, a court will resolve this issue by asking the following three questions:

- 1) Does the legislation pursue a legitimate state end?
- 2) Is the legislation rationally related to that legitimate state end?
- 3) Is the burden imposed on interstate commerce outweighed by the state's interest in enforcing the legislation?

If the court answers "yes" to all three questions, it will uphold the legislation. Although I have not researched this issue thoroughly, I think that you should at least be aware of this potential attack. If you want, I would be happy to look more closely at this issue for you.

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