

Honolulu, Hawaii

FEB 17

RE: S.B. No. 2200
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Media, Arts, Science, and Technology, to which was referred S.B. No. 2200 entitled:

"A BILL FOR AN ACT RELATING TO CHILD PROTECTION,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Establish a registry of children's electronic contact points to which unsolicited messages regarding pornography, illegal or prescription drugs, alcohol, tobacco, gambling, firearms, and fireworks may not be sent;
- (2) Make sending a message to a registered electronic contact point a class C felony; and
- (3) Authorize a civil penalty of \$5,000 per unsolicited message of that type.

Your Committees received testimony in support of this measure from Unspam, the Hawaii Family Forum, Blueprint for Change, the Ohana Project, and nine private individuals. Your Committees received testimony in opposition to this measure from the Department of the Attorney General, the U.S. Smokeless Tobacco (USST) Company, ValueClick, Inc., and a private individual. The Department of Commerce and Consumer Affairs, the Office of the Auditor, the Office of Information Practices, the Email Sender and



Provider Coalition (ESPC), and the Wine Institute submitted comments.

A registry of children's electronic contact points is critical for parents and law enforcement officials to protect children. A registry will provide safeguards and contact points for schools and parents to access their children without dangerous and inappropriate messages from Internet abusers. Your Committee finds that a registry is a good first step in protecting children from the dangers of the harmful messages that are available on the Internet and amending the law will allow stricter penalties for those who send out harmful messages to children.

The Department of the Attorney General has raised concerns regarding this measure. The Department is concerned that the measure fails to articulate what constitutes the mechanism to ensure compliance with the new part established by the measure and what constitutes compliance with the new part or the registry. Another concern of the Department is that the measure's characterization of a violation established in the new part as a "computer crime" appeared inappropriate for certain violations. Finally the Department raised concerns over enforcement issues regarding the "primary purpose" of an email.

The Department is also concerned that the measure raises First Amendment issues with regards to its impact on commercial speech. The measure prohibits sending a message to a contact point if the primary purpose of the message is to advertise or induce the sale of a product or service that the law prohibits a minor from purchasing, viewing, possessing, participating in, or otherwise receiving. The Department points out that advertising the availability of these types of products or services is not illegal. Minors are exposed daily to print and media advertisements regarding alcohol and tobacco, not to mention shows that depicts actual gambling events.


In light of the issues raised in the testimony submitted, your Committee finds that these issues merit further consideration and dialogue. Accordingly, your committee has amended this measure by inserting an effective date of July 1, 2050 to ensure ongoing discussion on this issue.

As affirmed by the record of votes of the members of your Committee on Media, Arts, Science, and Technology that is attached to this report, your Committee is in accord with the intent and



purpose of S.B. No. 2200, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2200, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Media, Arts,
Science, and Technology,


CAROL FUKUNAGA, Chair



