

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 19, 2002 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

SB 416 - Expenditures from the driving under the influence equipment fund

Representative Long made the motion to report SB 416 favorably for passage. Representative Lloyd seconded the motion. The motion carried.

SB 208 - Driving under the influence of an inhalant

Representative Loyd made the motion to amend in HB 2328 - abusing toxic vapors. Representative Long seconded the motion. The motion carried.

Representative Dillmore made the motion to strike on page 4 section (4) and replace with Kansas Highway Patrol. Representative Long seconded the motion. Committee members discussed adding "inhalant" to the list instead of using the highway patrols amendment. With permission of the second, Representative Dillmore withdrew his motion.

Representative Dillmore made the motion to tie the definition of inhalant with the definition of toxic vapors. Representative Long seconded the motion. The motion carried.

Representative Long made the motion to report Substitute SB 208 favorably for passage, with revisors revisions. Representative DiVita seconded the motion. The motion carried.

SB 467 - Commercial electronic mail act - unwanted spam

Representative Loyd made the motion to adopt the balloon (Attachment 1). Representative Crow seconded the motion. The motion carried.

Representative DiVita made the motion to amend on page 4 to allow for the following safe harbor provisions: if the person has taken reasonable preventive measures to prevent violations; violations resulting from an error; and if the person has not committed a violation within the previous 180 days. Representative Loyd seconded the motion. The motion carried 8-8.

Representative Loyd made the motion to delete subsection (k). Representative Dillmore seconded the motion. The motion carried.

Representative Lloyd made the motion to strike sections (i), (ii). Representative Loyd seconded the motion. The motion carried.

Representative Dillmore made the motion to report SB 467 favorably for passage, as amended. Representative Crow seconded the motion.

Representative Newton made a substitute motion to strike "inquire". Representative Lloyd seconded the motion. The motion carried.

Representative Dillmore renewed his motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 19, 2002 in Room 313-S of the Capitol.

SB 434 - Expand the definition of unlawful sexual relations to include contracted employees

Representative Long made the motion to report SB 434 favorably for passage. Representative Lloyd seconded the motion.

Representative Dillmore made a substitute motion to amend in HB 2853 - Requiring the offender to state exact nature of alleged error in the criminal offender history. Representative Pauls seconded the motion. The motion carried.

Representative Dillmore made the motion to amend in HB 2855 - crime victims given notice of parole public comment sessions if an off-grid felony. Representative Long seconded the motion. The motion carried.

Representative Long made the motion to amend in HB 2181 - cockfighting, severity level 10 non-person felony. Representative Lloyd seconded the motion. The motion carried.

Representative Klein made the motion to amend the penalty from a Level 10 non-person felony to a class A misdemeanor for conducting a fight and a class B for attending one. Representative Owens seconded the motion. The motion carried.

Representative DiVita made the motion to amend in HB 2969 - postrelease supervision for persons convicted of misdemeanors, with "shall" changed to "may". Representative Lloyd seconded the motion. Committee members were concerned with putting additional conditions on someone who has already completed their sentence. With permission of the second, Representative DiVita withdrew her motion.

Representative Long made the motion to amend in the provisions of HB 2856 - forensic lab reports at preliminary hearings. Representative DiVita seconded the motion. The motion carried 9-5.

Representative Howell made the motion to report Substitute SB 434 favorably for passage. Representative Long seconded the motion. The motion carried.

SB 400 - Nonresident administrators authorized when appointing a resident agent

Representative made the motion to amend in the provisions of HB 2672 - elective share of surviving spouse, making it prospective after July 1, 2002 and adding at the end "waived by each spouse if applicable". Representative Loyd seconded the motion. The motion carried.

Representative Long made the motion to report SB 400 favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

Representative Long made the motion to approve the committee minutes from February 13, 14, 18 & 19. Representative Swenson seconded the motion. The committee directed the committee secretary to revise the committee minutes from February 19 to address the issue that Robert Visnaw, United States Immigration Services, appeared but did not have the authority to represent the INS. The motion carried.

BALLOON
AMENDMENTS

Session of 2002

Substitute for SENATE BILL No. 467

By Committee on Commerce

2-26

AN ACT concerning information technology; providing protection from deceptive and unwanted electronic mail messages; establishing certain acts a violation of the Kansas consumer protection act; allowing for either a cause of action or civil penalty for a violation.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) This act shall be known as the commercial electronic mail act.

(b) As used in this act:

(1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate or transmit a commercial electronic mail message when the person providing the assistance knows that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates the Kansas consumer protection act.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting property or services for sale or lease, but shall not include electronic mail messages sent by a natural person volunteering to send such messages on behalf of a charitable organization as defined by K.S.A. 17-1760, and amendments thereto, ~~or to electronic mail messages, other than messages of a sexually explicit or otherwise adult oriented nature, sent to less than 500 recipients.~~

[delete]

(3) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(4) "Established business relationship" means a prior and existing relationship formed by a voluntary two-way communication between a sender and a recipient with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the recipient regarding products or services offered by such sender, which relationship has not been previously terminated by either party.

during the preceding 36 months

(5) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message,

1 unless such intervening interactive computer service assists in the trans-
2 mission of an electronic mail message when it knows, that the person
3 initiating the transmission is engaged, or intends to engage, in any act or
4 practice that violates the Kansas consumer protection act.

5 (6) "Interactive computer service" means any information service,
6 system or access software provider that provides or enables computer
7 access by multiple users to a computer server, including specifically a
8 service or system that provides access to the internet and such systems
9 operated or services offered by libraries or educational institutions.

10 (7) "Internet domain name" refers to a globally unique, hierarchical
11 reference to an internet host or service, assigned through centralized
12 internet naming authorities, comprising a series of character strings sep-
13 arated by periods, with the right-most string specifying the top of the
14 hierarchy.

15 (8) "Express authorization" means an express affirmative act by a re-
16 cipient clearly agreeing receive commercial electronic messages from a
17 specified and identifiable sender, or from multiple persons.

18 (c) No person shall:

19 (1) Initiate the transmission, conspire with another to initiate the
20 transmission, or assist the transmission, of a commercial electronic mail
21 message from a computer located in Kansas or to an electronic mail ad-
22 dress that the sender knows, is held by a Kansas resident that:

23 (A) Uses a third party's internet domain name without permission of
24 the third party, or otherwise misrepresents or obscures any information
25 in identifying the point of origin or the transmission path of a commercial
26 electronic mail message;

27 (B) contains false or misleading information in the subject line;

28 (C) does not contain as the first four characters of the subject line
29 "ADV: "; Provided, however, the characters "ADV" shall not be required
30 in the subject line if the recipient has an established business relationship
31 or has given express authorization to receive commercial electronic mail
32 messages. The sender claiming exemption under this subsection shall
33 have the burden of proving the express authorization by a preponderance
34 of the evidence.

35 (D) does not contain instructions, in text at least as large as the ma-
36 jority of the text in the transmission, for the recipient to follow to notify
37 the sender not to send any subsequent communications, with either:

38 ~~(i) An electronic mail address to which the recipient may reply to~~
39 ~~notify the sender not to send any subsequent communications, or~~

40 ~~(ii) the legal name of the person or entity initiating the transmission,~~
41 ~~including such person or entity's physical address for the receipt of the~~
42 ~~United States mail and a toll free telephone number that the recipient~~
43 ~~may call to notify the sender not to send any subsequent communications,~~

(i)

, (ii) if the recipient

, or (iii) in electronic mail messages,
other than messages of a sexually
explicit or otherwise adult nature, sent
to less than 500 recipients.

exemption

a valid sender operated return electronic
mail address to which the recipient may
reply to notify the sender not to send
any further commercial electronic mail
messages. It shall be prima facie
evidence that the sender is in violation
of this section if the recipient's reply
electronic mail message is returned to
the recipient as undeliverable, or is
otherwise not accepted by the sender of
the original commercial electronic mail
message.

1 ~~and~~
 2 (E) contains advertising material for viewing, use, consumption, sale,
 3 lease or rental only by persons over 18 years of age, including but not
 4 limited to content of sexual, sexually explicit or otherwise adult-oriented
 5 nature, unless the first eight characters of the subject line are
 6 "ADV:ADLT."

7 (2) Initiate the transmission, conspire with another to initiate the
 8 transmission, or assist the transmission, of a commercial electronic mail
 9 message from a computer located in Kansas or to an electronic mail ad-
 10 dress that the sender knows, is held by a Kansas resident that is made
 11 after the recipient thereof has notified the sender not to send any sub-
 12 sequent communications.

13 (3) Give, transfer, sell or otherwise share with another the electronic
 14 mail address of any recipient who has notified the sender not to send any
 15 subsequent communications for any use other than for the third party to
 16 place the address on a do not contact list.

17 (4) Assist in the transmission of a commercial electronic mail mes-
 18 sage, when the person providing the assistance knows, that the initiator
 19 of the commercial electronic mail message is engaged, or intends to en-
 20 gage, in any act or practice that violates the Kansas consumer protection
 21 act.

22 (d) For purposes of this section, a person knows or has reason to know
 23 that the intended recipient of a commercial electronic mail message is a
 24 Kansas resident if that information is available, upon request, from the
 25 registrant of the internet domain name contained in the recipient's elec-
 26 tronic mail address.

27 (e) An interactive computer service may, upon its own initiative, block
 28 the receipt or transmission through its service of any commercial elec-
 29 tronic mail that it reasonably believes is, or will be, sent in violation of
 30 this chapter.

31 (f) No interactive computer service may be held liable for any action
 32 voluntarily taken in good faith to block the receipt or transmission through
 33 its service of any commercial electronic mail which it reasonably believes
 34 is, or will be, sent in violation of this act.

35 (g) Any violation of this section is an unconscionable act and practice
 36 under the Kansas consumer protection act.

37 (h) Any person alleging a violation of this section including an inter-
 38 active computer service damaged by a violation, shall be deemed a con-
 39 sumer who has been aggrieved by a violation of the Consumer protection
 40 act and to have suffered actual loss as referred to in K.S.A. 50-634 and
 41 50-636 and amendments thereto.

42 (i) Any person alleging a violation of this section may bring a private
 43 action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section,

or

(5) knowingly sell, give or otherwise
 distribute or possess with the intent to
 sell, give or distribute software that:
 (A) is primarily designed or produced
 for the purpose of facilitating or
 enabling the falsification of electronic
 mail transmission information or other
 routing information;
 (B) has only limited commercially
 significant purpose or use other than to
 facilitate or enable the falsification of
 electronic mail transmission information
 or other routing information; or
 (C) is marketed by that person or
 another acting in concert with that
 person with that person's knowledge for
 use in facilitating or enabling the
 falsification of electronic mail
 transmission information or other
 routing information.

1 and amendments thereto, and such person shall be considered a con-
2 sumer pursuant to K.S.A. 50-624, and amendments thereto, for the pur-
3 poses of such private action.

4 (j) Any person that violates this section shall be subject to a civil
5 penalty of not less than \$500 nor more than \$10,000 for each such violation
6 instead of the penalty provided for in subsection (a) of K.S.A. 50-636, and
7 amendments thereto.

8 ~~(k) No person shall be liable for violation of this act if the person has
9 established and implemented procedures to comply with the act and any
10 subsequent commercial electronic mail message is the result of error.~~

11 (l) The legislature finds that the practices covered by this section are
12 matters vitally affecting the public interest for the purpose of applying
13 the Kansas consumer protection act. A violation of this section is not
14 reasonable or necessary for the development and preservation of com-
15 merce and is an unconscionable act in violation of the Kansas consumer
16 protection act.

17 (m) This section shall be a part of and supplemental to the Kansas
18 consumer protection act.

19 Sec. 2. This act shall take effect and be in force from and after its
20 publication in the statute book.

No person shall be liable for a violation of this act if (1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of this act, (2) the violation is the result of error; and (3) such person has committed no other violation within the previous 180 days. Any person claiming exemption under this section shall have the burden of proving the exemption by a preponderance of the evidence.