

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT  
SUBSTITUTE FOR SENATE BILL NO. 467**

As Agreed to April 11, 2002

**Brief \***

Sub. for SB 467, would govern the transmission of unsolicited commercial electronic mail messages, often referred to as "spam." The bill would prohibit a person from initiating, conspiring to initiate, or assisting in the transmission of a commercial email from a computer located in Kansas or to an email address that the sender knows is held by a Kansas resident unless the message meets the following criteria:

- The email may not use a third party's Internet domain name without permission of the third party, or otherwise misrepresent any information identifying the origin or transmission path.
- The email may not contain false or misleading information in the subject line.
- The bill also prohibits the selling, distributing, or possessing with intent to sell, software that
  - is primarily designed or produced for facilitating or enabling the falsification of email transmission information or other routing information;
  - has only limited commercially significant purpose or use other than the falsification of email transmission information or other routing information; or
  - is marketed with the knowledge that the use will be for falsification purposes.

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\*Conference committee summary reports are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree.

- The first four characters of the subject line of the email would be required to contain the designation “ADV:” However, this would not be required if the recipient has an established business relationship or has given express authorization to receive commercial electronic mail messages. An exception would be provided for emails sent on behalf of a charitable organization. An exception also would be provided if the emails were sent to less than 500 recipients per month so long as the email does not include sexually explicit or adult-oriented materials.
- The email would be required to contain instructions for the recipient to follow to notify the sender not to send any subsequent communications. These “opt-out” instructions would be required to contain a return email address and the legal name of the sender and would also be required to have either the physical address or a toll-free telephone number for the sender. It will be *prima facie* evidence that the sender is in violation of the Consumer Protection Act if the recipient's reply to not send any subsequent communications is returned to the recipient as undeliverable or is otherwise not accepted by the sender.
- If the email contained sexually explicit advertising or otherwise adult-oriented material, the subject line of the email would be required to contain the designation “ADV:ADLT.”

Under the bill, a person would also be prohibited from initiating, conspiring to initiate, or assisting in the transmission of a commercial email to the email address of a recipient who has notified the sender not to send any subsequent communication. Likewise, the bill would prohibit the transfer of the email address of a recipient who has notified the sender not to send any subsequent communication. The bill would also prohibit a person from providing assistance in the transmission of a commercial email when the person providing the assistance knows that the initiator of the commercial email is violating the Kansas Consumer Protection Act.

A violation of the provisions of the bill would be considered an unconscionable act and practice under the Kansas Consumer Protection Act. The bill would provide a private cause of action under the Kansas Consumer Protection Act for any person alleging a violation of the provisions of the bill, including interactive computer services damaged by a violation.

The bill would provide an affirmative defense, which could be used only once a year, if the person sent an unsolicited commercial email in error and can demonstrate, by clear and convincing evidence, that the sender maintained a list of consumers who have notified the person not to send any subsequent commercial emails, established and implemented reasonable practices and procedures to effectively prevent unsolicited commercial emails; trained the sender's personnel in the requirements of the law; and maintained records demonstrative compliance with the law.

Under the bill, civil penalties for violation of the provisions of the bill would be between \$500 and \$10,000 for each violation.

## **Background**

The Senate Committee held hearings on Sub. for SB 467, at which time the Kansas Attorney General's Office was the primary proponent of the bill. Several conferees offered qualified support for the bill with amendments. These included representatives of Experian, the Direct Marketing Association, Sprint, and the Internet Alliance.

The Senate Committee recommended a substitute bill after making several amendments to the original bill. These included creating exceptions for distribution of commercial emails on behalf of charities and to less than 500 recipients, the creation of a cause of action for interactive computer services who have been damaged by a violation of the act, as well as provisions advocated by the industry such as the exception for commercial emails to recipients with an established business relationship with the sender, and protection when there are established and implemented procedures to comply with the act and a subsequent commercial email is the result of error.

The Division of the Budget reports that the impact of SB 467, as introduced, on the Office of the Attorney General workload cannot be determined, although the requirements of the bill may decrease consumer complaints received by the Attorney General. An updated fiscal note is not currently available to reflect the changes made by the substitute bill.

The House Committee on Judiciary added the provisions regarding the enhanced definition of business relationship, the provision for *prima facie* evidence and the prohibition regarding software that enables the falsification of email transmission informa-

tion. The House Committee deleted the exemption regarding email messages sent to less than 500 recipients.

The House Committee of the Whole added provisions regarding profiteering from a natural disaster to the bill.

The Conference Committee removed the provisions regarding profiteering from a natural disaster from the bill. The Conference Committee also reached agreement on several disputed provisions including the "opt-out" requirements and the exemption for emails sent to less than 500 recipients per month.