

## SENATE BILL No. 467

By Committee on Commerce

1-29

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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 or consciously avoids knowing 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.

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

(4) "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, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the Kansas consumer protection act.

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

1 (6) "Internet domain name" refers to a globally unique, hierarchical  
2 reference to an internet host or service, assigned through centralized  
3 internet naming authorities, comprising a series of character strings sep-  
4 arated by periods, with the right-most string specifying the top of the  
5 hierarchy.

6 (c) No person shall:

7 (1) 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, or has reason to know, is held by a Kansas  
11 resident that:

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

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

17 (C) does not contain as the first four characters of the subject line  
18 "ADV:";

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

22 (i) An electronic mail address to which the recipient may reply to  
23 notify the sender not to send any subsequent communications; or

24 (ii) the legal name of the person or entity initiating the transmission,  
25 including such person or entity's physical address for the receipt of the  
26 United States mail and a toll-free telephone number that the recipient  
27 may call to notify the sender not to send any subsequent communications;  
28 and

29 (E) contains advertising material for viewing, use, consumption, sale,  
30 lease or rental only by persons over 18 years of age, including but not  
31 limited to content of sexual, sexually explicit or otherwise adult-oriented  
32 nature, unless the first eight characters of the subject line are  
33 "ADV:ADLT."

34 (2) Initiate the transmission, conspire with another to initiate the  
35 transmission, or assist the transmission, of a commercial electronic mail  
36 message from a computer located in Kansas or to an electronic mail ad-  
37 dress that the sender knows, or has reason to know, is held by a Kansas  
38 resident that is made after the recipient thereof has notified the sender  
39 not to send any subsequent communications.

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

1 (4) Assist in the transmission of a commercial electronic mail mes-  
2 sage, when the person providing the assistance knows, or consciously  
3 avoids knowing, that the initiator of the commercial electronic mail mes-  
4 sage is engaged, or intends to engage, in any act or practice that violates  
5 the Kansas consumer protection act.

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

11 (e) Any violation of this section is an unconscionable act and practice  
12 under the Kansas consumer protection act.

13 (f) Any person alleging a violation of this section shall be deemed a  
14 consumer who has been aggrieved by a violation of the Consumer pro-  
15 tection act and to have suffered actual loss as referred to in K.S.A. 50-  
16 634 and 50-636 and amendments thereto.

17 (g) Any person alleging a violation of this section may bring a private  
18 action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section,  
19 and amendments thereto, and such person shall be considered a con-  
20 sumer pursuant to K.S.A. 50-624, and amendments thereto, for the pur-  
21 poses of such private action.

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

26 (i) The legislature finds that the practices covered by this section are  
27 matters vitally affecting the public interest for the purpose of applying  
28 the Kansas consumer protection act. A violation of this section is not  
29 reasonable or necessary for the development and preservation of com-  
30 merce and is an unconscionable act in violation of the Kansas consumer  
31 protection act.

32 (j) This section shall be a part of and supplemental to the Kansas  
33 consumer protection act.

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

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