

SENATE BILL No. 517

By Committee on Commerce

2-11

9 AN ACT concerning information technology; relating to unlawful com-
10 puter use; amending K.S.A. 2003 Supp. 50-6,107 and repealing the
11 existing section.

12

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

14 Section 1. K.S.A. 2003 Supp. 50-6,107 is hereby amended to read as
15 follows: 50-6,107. (a) This act shall be known as the commercial electronic
16 mail act.

17 (b) As used in this act:

18 (1) "Assist the transmission" means actions taken by a person to pro-
19 vide substantial assistance or support which enables any person to for-
20 mulate, compose, send, originate, initiate or transmit a commercial elec-
21 tronic mail message when the person providing the assistance knows that
22 the initiator of the commercial electronic mail message is engaged, or
23 intends to engage, in any practice that violates the Kansas consumer pro-
24 tection act.

25 (2) "Commercial electronic mail message" means an electronic mail
26 message sent for the purpose of promoting property or services for sale
27 or lease, but shall not include electronic mail messages sent by a natural
28 person volunteering to send such messages on behalf of a charitable or-
29 ganization as defined by K.S.A. 17-1760, and amendments thereto.

30 (3) "Electronic mail address" means a destination, commonly ex-
31 pressed as a string of characters, to which electronic mail may be sent or
32 delivered.

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

39 (5) "Initiate the transmission" refers to the action by the original
40 sender of an electronic mail message, not to the action by any intervening
41 interactive computer service that may handle or retransmit the message,
42 unless such intervening interactive computer service assists in the trans-
43 mission of an electronic mail message when it knows, that the person

1 initiating the transmission is engaged, or intends to engage, in any act or
2 practice that violates the Kansas consumer protection act.

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

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

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

16 (9) “Computer” means an electronic, magnetic, optical, hydraulic or
17 organic device or group of devices which, pursuant to a computer pro-
18 gram, to human instruction or to permanent instructions contained in the
19 device or group of devices, can automatically perform computer opera-
20 tions with or on computer data and can communicate the results to an-
21 other computer or to a person. The term “computer” includes any con-
22 nected or directly related device, equipment, or facility which enables the
23 computer to store, retrieve or communicate computer programs, computer
24 data or the results of computer operations to or from a person, another
25 computer or another device.

26 (10) “Computer data” means any representation of information,
27 knowledge, facts, concepts or instructions which is being prepared or has
28 been prepared and is intended to be processed, is being processed, or has
29 been processed in a computer or computer network. “Computer data”
30 may be in any form, whether readable only by a computer or only by a
31 human or by either, including, but not limited to, computer printouts,
32 magnetic storage media, punched cards or stored internally in the memory
33 of the computer.

34 (11) “Computer network” means a set of related, remotely connected
35 devices and any communications facilities including more than one com-
36 puter with the capability to transmit data among them through the com-
37 munications facilities.

38 (12) “Computer operation” means arithmetic, logical, monitoring,
39 storage or retrieval functions and any combination thereof, and includes,
40 but is not limited to, communication with, storage of data to, or retrieval
41 of data from any device or human hand manipulation of electronic or
42 magnetic impulses. A “computer operation” for a particular computer
43 may also be any function for which that computer was generally designed.

1 (13) "Computer program" means an ordered set of data representing
2 coded instructions or statements that, when executed by a computer,
3 causes the computer to perform one or more computer operations.

4 (14) "Computer services" means computer time or services, including
5 data processing services, internet services, electronic mail services, elec-
6 tronic message services or information or data stored in connection
7 therewith.

8 (15) "Computer software" means a set of computer programs, pro-
9 cedures and associated documentation concerned with computer data or
10 with the operation of a computer, computer program or computer
11 network.

12 (16) "Electronic mail service provider" means any person who (i) is
13 an intermediary in sending or receiving electronic mail and (ii) provides
14 to end-users of electronic mail services the ability to send or receive elec-
15 tronic mail.

16 (17) "Financial instrument" includes, but is not limited to, any check,
17 draft, warrant, money order, note, certificate of deposit, letter of credit,
18 bill of exchange, credit or debit card, transaction authorization mecha-
19 nism, marketable security or any computerized representation thereof.

20 (18) "Owner" means an owner or lessee of a computer or a computer
21 network or an owner, lessee or licensee of computer data, computer pro-
22 grams or computer software.

23 (19) "Person" shall include any individual, partnership, association,
24 corporation or joint venture.

25 (20) "Property" includes: (A) Real property; (B) computers and com-
26 puter networks; (C) financial instruments, computer data, computer pro-
27 grams, computer software and all other personal property regardless of
28 whether they are: (i) Tangible or intangible; (ii) in a format readable by
29 humans or by a computer; (iii) in transit between computers or within a
30 computer network or between any devices which comprise a computer;
31 (iv) located on any paper or in any device on which it is stored by a
32 computer or by a human; and (v) computer services.

33 (21) A person "uses" a computer or computer network when such
34 person:

35 (A) Attempts to cause or causes a computer or computer network to
36 perform or to stop performing computer operations;

37 (B) attempts to cause or causes the withholding or denial of the use
38 of a computer, computer network, computer program, computer data or
39 computer software to another user; or

40 (C) attempts to cause or causes another person to put false informa-
41 tion into a computer.

42 (22) A person is "without authority" when such person: (A) Has no
43 right or permission of the owner to use a computer or uses a computer in

1 *a manner exceeding such right or permission; or (B) uses a computer, a*
2 *computer network or the computer services of an electronic mail service*
3 *provider to transmit unsolicited bulk electronic mail in contravention of*
4 *the authority granted by or in violation of the policies set by the electronic*
5 *mail service provider. Transmission of electronic mail from an organiza-*
6 *tion to its members shall not be deemed to be unsolicited bulk electronic*
7 *mail.*

8 (c) No person shall:

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

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

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

18 (C) does not contain as the first four characters of the subject line
19 "ADV."; Provided, however, the characters "ADV" shall not be required
20 in the subject line if the recipient has an established business relationship
21 or has given express authorization to receive commercial electronic mail
22 messages or in electronic mail messages, other than messages of a sexually
23 explicit or otherwise adult oriented nature, sent to less than 500 recipients
24 per month. The sender claiming exemption under this subsection shall
25 have the burden of proving the exemption by a preponderance of the
26 evidence;

27 (D) does not contain instructions, in text at least as large as the ma-
28 jority of the text in the transmission, for the recipient to follow to notify
29 the sender not to send any subsequent communications, with a valid
30 sender operated return electronic mail address to which the recipient
31 may reply to notify the sender not to send any further commercial elec-
32 tronic mail messages and the legal name of the person or entity initiating
33 the transmission, including such person's or entity's (i) physical address
34 for the receipt of the United States mail or (ii) a toll free telephone
35 number that the recipient may call to notify the sender not to send any
36 subsequent communications. It shall be prima facie evidence that the
37 sender is in violation of this section if the recipient's reply electronic mail
38 message is returned to the recipient as undeliverable, or is otherwise not
39 accepted by the sender of the original commercial electronic mail mes-
40 sage; or

41 (E) contains advertising material for viewing, use, consumption, sale,
42 lease or rental only by persons over 18 years of age, including but not
43 limited to content of sexual, sexually explicit or otherwise adult-oriented

1 nature, unless the first eight characters of the subject line are
2 “ADV:ADLT.”

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

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

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

18 (5) Knowingly sell, give or otherwise distribute or possess with the
19 intent to sell, give or distribute software that:

20 (A) Is primarily designed or produced for the purpose of facilitating
21 or enabling the falsification of electronic mail transmission information
22 or other routing information;

23 (B) has only limited commercially significant purpose or use other
24 than to facilitate or enable the falsification of electronic mail transmission
25 information or other routing information; or

26 (C) is marketed by that person or another acting in concert with that
27 person with that person’s knowledge for use in facilitating or enabling the
28 falsification of electronic mail transmission information or other routing
29 information.

30 (6) *Use a computer or computer network located in Kansas without*
31 *authority and with the intent to:*

32 (A) *Temporarily or permanently remove, halt or otherwise disable*
33 *any computer data, computer programs or computer software from a*
34 *computer or computer network;*

35 (B) *cause a computer to malfunction, regardless of how long the mal-*
36 *function persists;*

37 (C) *alter or erase any computer data, computer programs or com-*
38 *puter software;*

39 (D) *effect the creation or alteration of a financial instrument or of an*
40 *electronic transfer of funds;*

41 (E) *cause physical injury to the property of another;*

42 (F) *make or cause to be made an unauthorized copy, in any form,*
43 *including, but not limited to, any printed or electronic form of computer*

- 1 *data, computer programs, or computer software residing in, communi-*
2 *cated by or produced by a computer or computer network; or*
- 3 (G) *falsify or forge electronic mail transmission information or other*
4 *routing information in any manner in connection with the transmission*
5 *of unsolicited bulk electronic mail through or into the computer network*
6 *of an electronic mail service provider or its subscribers.*
- 7 (7) *Knowingly sell, give or otherwise distribute in Kansas or possess*
8 *with the intent to sell, give or distribute in Kansas software which: (A) Is*
9 *primarily designed or produced for the purpose of facilitating or enabling*
10 *the falsification of electronic mail transmission information or other rout-*
11 *ing information;*
- 12 (B) *has only limited commercially significant purpose or use other*
13 *than to facilitate or enable the falsification of electronic mail transmission*
14 *information or other routing information; or*
- 15 (C) *is marketed by that person or another acting in concert with that*
16 *person with that person's knowledge for use in facilitating or enabling the*
17 *falsification of electronic mail transmission information or other routing*
18 *information.*
- 19 (d) For purposes of this section, a person knows or has reason to know
20 that the intended recipient of a commercial electronic mail message is a
21 Kansas resident if that information is available, upon request, from the
22 registrant of the internet domain name contained in the recipient's elec-
23 tronic mail address.
- 24 (e) An interactive computer service may, upon its own initiative, block
25 the receipt or transmission through its service of any commercial elec-
26 tronic mail that it reasonably believes is, or will be, sent in violation of
27 this chapter.
- 28 (f) No interactive computer service may be held liable for any action
29 voluntarily taken in good faith to block the receipt or transmission through
30 its service of any commercial electronic mail which it reasonably believes
31 is, or will be, sent in violation of this act.
- 32 (g) Any violation of this section is an unconscionable act and practice
33 under the Kansas consumer protection act.
- 34 (h) Any person alleging a violation of this section including an inter-
35 active computer service damaged by a violation, shall be deemed a con-
36 sumer who has been aggrieved by a violation of the consumer protection
37 act and to have suffered actual loss as referred to in K.S.A. 50-634 and
38 50-636 and amendments thereto.
- 39 (i) Any person alleging a violation of this section may bring a private
40 action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section,
41 and amendments thereto, and such person shall be considered a con-
42 sumer pursuant to K.S.A. 50-624, and amendments thereto, for the pur-
43 poses of such private action.

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

5 (k) It shall be an affirmative defense to a violation of this section if
6 the person can demonstrate, by clear and convincing evidence, (1) that
7 the sender at the time of the alleged violation had: (A) Maintained a list
8 of consumers who have notified the person not to send any subsequent
9 commercial electronic messages; (B) established and implemented, with
10 due care, reasonable practices and procedures to effectively prevent un-
11 solicited commercial electronic mail messages in violation of this section;
12 (C) trained the sender's personnel in the requirements of this section;
13 and (D) maintained records demonstrating compliance with this section;
14 and (2) the unsolicited commercial electronic message was the result of
15 an error. Such defense shall not be exercised by any person more than
16 once within the state of Kansas in any 12-month period. A person shall
17 be deemed to have exercised such defense if asserted in response to any
18 consumer complaint about a violation of this section, regardless of
19 whether litigation has been initiated.

20 (l) *Any person who violates this section shall be guilty of a class B*
21 *misdemeanor. If damage to the property of another valued at \$100 or*
22 *more is caused by such person's reckless disregard for the consequences*
23 *of such person's act in violation of this section, the offense shall be pun-*
24 *ished as a class A misdemeanor. If damage to the property of another*
25 *valued at \$1,000 or more is caused by such person's malicious act in*
26 *violation of this section, the offense shall be a severity level 9, nonperson*
27 *felony.*

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

34 (n) *Nothing in this section shall be construed to interfere with or*
35 *prohibit terms or conditions in a contract or license related to computers,*
36 *computer data, computer networks, computer operations, computer pro-*
37 *grams, computer services or computer software or to create any liability*
38 *by reason of terms or conditions adopted by, or technical measures im-*
39 *plemented by, a Kansas based electronic mail service provider to prevent*
40 *the transmission of unsolicited electronic mail in violation of this act.*

41 ~~(o)~~ (o) This section shall be a part of and supplemental to the Kansas
42 consumer protection act.

43 Sec. 2. K.S.A. 2003 Supp. 50-6,107 is hereby repealed.

1 Sec. 3. This act shall take effect and be in force from and after its
2 publication in the statute book.