

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2599

As Amended by House Committee on
Utilities

Brief*

HB 2599 would enact Kansas No-fax Act which would enable consumers to register on a statewide "no-fax" list. The bill would authorize the Attorney General to contract with the Direct Marketing Association (DMA), or another vendor, to maintain the no-fax list. The Act would become part of the Kansas Consumer Protection Act and violations of the No-fax Act would be unconscionable acts or practices under the Consumer Protection Act. The bill also would enact a new law prohibiting dissemination of e-mail addresses for commercial purposes under certain circumstances. Violations of the e-mail provisions of the bill would be deceptive acts or practices under the Consumer Protection Act.

No-fax Act

An unsolicited consumer fax would be defined as a fax that is not sent in response to a request from the recipient or a fax from a sender who does not have an ongoing business relationship with the recipient. Consumer faxes would be defined to include faxes sent to the residence of a consumer.

The bill would establish requirements for creating, maintaining, and utilizing a Kansas no-fax list. Consumers would be allowed to register on the no-fax list free of charge by contacting the vendor who contracts with the Attorney General to create and maintain the Kansas no-fax list. The bill also would authorize the Attorney General to compile a list of consumer fax numbers that comprise the no-fax list and submit that list to the vendor. A consumer's registration on the no-fax list would remain in effect for five years. Except as directed by the Attorney General, the vendor who compiles the no-fax list would not be able to disclose or use any of the addresses obtained from consumers who register to be placed on the no-fax list for any other purpose. The bill would provide that if the Federal Trade Commission establishes a

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

national no-fax list, the Attorney General would be authorized to designate that national list as the Kansas No-fax list.

The bill would require that the no-fax list be updated quarterly by the vendor and that those quarterly updates be provided to fax solicitors. Fax solicitors would be required to consult the no-fax list prior to making any unsolicited faxes in Kansas. Fax solicitors would have 30 days from the day the updated list is released to remove a consumer's fax number from their faxing lists.

The bill would require clear notice to consumers informing them that fax numbers would not be immediately added to the no-fax list and that it might be as long as 150 days before the consumer's fax number is removed from solicitors' faxing lists. The notice provided to consumers either by the Attorney General or by the vendor also would have to clearly state that the consumer and the Attorney General may not be able to enforce provisions of the Act within 150 days of the consumer registering on the no-fax list.

Any penalties or fees recovered from violators of the Act would be deposited with the Attorney General to be used to investigate and prosecute violations of the No-fax Act. The Attorney General would be required to report to the Legislature each year regarding the status of implementation of the Act. Those reports would be made to the standing House and Senate Committees that work with telecommunications issues.

Distribution of e-mail addresses

The bill also would prohibit conference, seminar, or meeting sponsors or organizers who obtain e-mail addresses in the course of meeting registration from disseminating those addresses for commercial purposes without the express authorization of the registrants. The provision would become part of the Kansas Consumer Protection Act. Violation of the e-mail provisions of the bill would be deceptive or acts or practices under that Act.

Background

Introduction of the bill was requested by Representative Tom Sloan. At the House Utilities Committee hearing on the bill, Rep. Sloan indicated that HB 2599 is modeled on the state's "Do Not Call" legislation. No opponents of the bill presented testimony to the House Committee.

Representative Carl Krehbiel proposed that HB 2599 be amended to include the substance of 2005 HB 2369 prohibiting dissemination of e-mail addresses in certain circumstances. The House Committee amended the bill as suggested by Representative Krehbiel.

The Fiscal Note prepared by the Division of the Budget estimated the fiscal impact of the introduced version of the bill would be \$156,000 for FY 2007. That amount of additional expenditures from the State General Fund would be attributable to the hiring of additional personnel and related expenditures by the Attorney General's office. The new positions would include 2.50 FTE positions: an agent, an administrative person and a part-time attorney. Also included in the total are anticipated expenditures for database development and office supplies. The Fiscal Note also states that the Attorney General's office is not currently able to estimate the number of additional cases or the amount of money that could be generated from penalties or fees if this bill was passed. Finally, the Fiscal Note states that the Office of Judicial Administration anticipates increased court cases and related costs will result from passage of the bill, but that the Office cannot estimate the magnitude of the increase. Additional expenditures that would result from the bill are not reflected in the Governor's budget for FY 2007.