



Senate

General Assembly

File No. 148

January Session, 2003

Substitute Senate Bill No. 335

Senate, April 2, 2003

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING UNSOLICITED ELECTRONIC MAIL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-570c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) No person shall use a machine that electronically transmits
4 facsimiles through connection with a telephone network or a device
5 that automatically transmits a recorded telephone message to transmit
6 unsolicited advertising material or an unsolicited telephone message
7 which offers to sell goods or services.

8 (b) (1) No person shall send unsolicited advertising material by
9 electronic mail, or cause such material to be sent by electronic mail, to
10 an electronic mail address that the sender knows, or has reason to
11 know, is held by a resident of this state unless: (A) Such person
12 identifies in the electronic mail a toll-free telephone number or a valid
13 return electronic mail address that the recipient may use to notify the

14 sender to not send any further unsolicited electronic mail, and (B) the
 15 subject line includes the letters "ADV".

16 (2) Notwithstanding the provisions of subdivision (1) of this
 17 subsection, no person or entity shall send by electronic mail, or cause
 18 to be sent by electronic mail, unsolicited advertising material upon
 19 notification by a recipient of such recipient's request to not receive any
 20 further such material.

21 (3) For purposes of this subsection, "person" does not include an
 22 electronic mail service provider, as defined in section 53-451.

23 (4) For the purposes of this subsection, a person knows or has
 24 reason to know that the intended recipient of electronic mail is a
 25 resident of this state if that information is available, upon request, from
 26 the registrant of the Internet domain name contained in the intended
 27 recipient's electronic mail address.

28 [(b)] (c) Any person aggrieved by a violation of the provisions of
 29 [subsection (a) of] this section may bring a civil action in the Superior
 30 Court to enjoin further violations and to recover the actual damages
 31 sustained by reason of such violation, together with costs and a
 32 reasonable attorney's fee, or [two] five hundred dollars, whichever is
 33 greater. No such action shall be brought but within two years from the
 34 date of the act complained of.

35 (d) The Attorney General may bring an action in the Superior Court
 36 against any person engaged in a pattern or practice that violates the
 37 provisions of this section and may recover a civil penalty of not more
 38 than one thousand dollars per violation. As used in this subsection,
 39 "pattern or practice" means two or more separate and distinct
 40 violations of this section within a one-month period.

| | |
|--|-----------------|
| This act shall take effect as follows: | |
| Section 1 | October 1, 2003 |

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Type | FY 04 \$ | FY 05 \$ |
|---|----------------------|-----------------|-----------------|
| Consumer Protection, Dept. | GF - Cost | Up to 66,803 | Up to 64,578 |
| Comptroller Misc. Accounts (Fringe Benefits) | GF - Cost | Up to 11,390 | Up to 24,957 |
| Attorney General | GF - Revenue Gain | Potential | Potential |
| Attorney General | GF - Cost | 100,000 | 100,000 |

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill: 1) prohibits people and entities from sending advertising materials after the intended recipient has notified them not to send any further unsolicited electronic mail, 2) requires any e-mail message to include a toll-free telephone number or valid e-mail address, and 3) requires the e-mail's subject line to include the letters "ADV". It also authorizes the Attorney General to sue those who violate the existing "junk fax" law and the bill's anti-spam provisions, increases, from \$200 to \$500, the minimum damage award for private suits involving "junk fax" violations. Violators may be assessed a civil penalty of up to \$1,000 per violation.

The Trades Practices Division of the Department of Consumer Protection (DCP) currently handles 12,000 written complaints annually. Due to the ubiquity of spamming, the department estimates that it could receive an additional 5,000 complaints a year. Thus, depending on the number of additional complaints received and processed annually, the department could necessitate 2 additional Inspection Aides at an annual salary of \$30,277 per person. The table below indicates the potential costs to the DCP for the 2003-2005

biennium.

| | FY 04 | FY 05 |
|---|--------|--------|
| Personal Services (2 Inspection Aides) | 60,553 | 62,067 |
| Fringe Benefits | 11,390 | 24,957 |
| Other Expenses | 2,450 | 2,511 |
| Equipment | 3,800 | 0 |
| Total | 78,193 | 89,535 |

The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The total fringe benefit reimbursement rate as a percentage of payroll is 40.21%, effective July 1, 2002. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 18.81% in FY 04. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

It is anticipated that the Attorney General would incur a significant cost under the bill to investigate and prosecute violations. In particular, the agency would need the services of computer experts. It might also need to hire an additional attorney, depending upon the number of cases under the bill. The amount of potential revenue from civil penalties is uncertain.

OLR Bill Analysis

sSB 335

AN ACT CONCERNING UNSOLICITED ELECTRONIC MAIL**SUMMARY:**

This bill restricts the activities of people, other than electronic mail service providers, who e-mail unsolicited advertising material. It prohibits people and entities from sending unsolicited advertising material, or causing them to be sent, after the intended recipient has notified them that he does not want to receive any further communications of this type. In all other transmissions to Connecticut residents, (1) the e-mail's subject line must include the letters "ADV," and (2) the body of the message must include a toll-free telephone number or valid e-mail address the recipient can use to notify the sender not to send any more unsolicited advertising material.

The bill also (1) authorizes the attorney general to sue people who engage in a pattern or practice of violating the existing "junk fax" law and the bill's anti-spam provisions; (2) increases, from \$200 to \$500, the minimum damage award for private suits involving junk fax violations; and (3) makes this the minimum amount for private suits involving spam violators as well.

EFFECTIVE DATE: October 1, 2003

CONNECTICUT RESIDENTS

Under the bill, a person is deemed to know that an intended recipient is a Connecticut resident if that information is available, upon request, from the registrant of the Internet domain name (e.g., America Online) contained in the intended recipient's e-mail address.

COURT ENFORCEMENT***Pattern or Practice Suits Brought by the Attorney General***

The bill authorizes the attorney general to file a civil suit against any person who, within a one-month period, commits more than one separate and distinct violation of (1) the bill or (2) the existing "junk

fax” prohibition against electronic transmission of unsolicited advertising material by fax or recorded telephone message. Violators may be assessed a civil penalty of up to \$1,000 per violation.

Private Suits

The bill also allows any person aggrieved by a violation of the anti-spam provisions to file a civil suit in the same manner as people aggrieved by violations of the junk fax law currently may. It raises the minimum damage amount from \$200 to \$500. As under the junk fax law, people can recover actual damages, costs, and reasonable attorney’s fees instead, if this amount is greater than the statutory minimum. And they may obtain court orders that prohibit further violations. Suits must be brought within two years of the offending conduct.

BACKGROUND

Electronic Mail Service Providers

Electronic mail service providers (1) serve as intermediaries in sending or receiving electronic mail and (2) provide end-users the ability to send or receive electronic mail (CGS § 53-451(8)).

Related Connecticut Law – “Spoofing”

Connecticut law, adopted in 1999, prohibits falsifying or forging e-mail transmission information or other routing information (“spoofing”) in any way in connection with sending unsolicited bulk e-mail to the network of an Internet service provider or the provider’s subscribers (CGS § 53-451(b)(7)). Connecticut also prohibits selling or distributing software primarily designed to falsify e-mail transmission information (CGS § 53-451(c)).

The law imposes criminal and civil penalties, and authorizes the attorney general to enforce it. Injured parties, including internet service providers, can also sue under the statute. The law specifies that it must not be construed to limit their rights to pursue other civil remedies.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 18 Nay 0