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|SENATE RULES COMMITTEE           |                SB 1457|
|Office of Senate Floor Analyses  |                |
|1020 N Street, Suite 524         |                |
|(916) 445-6614                   |                |
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|327-4478                         |                |
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## UNFINISHED BUSINESS

Bill No: SB 1457  
 Author: Murray (D)  
 Amended: 8/5/04  
 Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 4-1, 4/12/04  
 AYES: Figueroa, Cedillo, Machado, Murray  
 NOES: Brulte  
 NO VOTE RECORDED: Aanestad, Vincent

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 22-5, 4/29/04  
 AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Ducheny,  
       Dunn, Escutia, Figueroa, Florez, Kuehl, Machado, Murray,  
       Ortiz, Perata, Romero, Scott, Sher, Speier, Torlakson,  
       Vasconcellos, Vincent  
 NOES: Ashburn, Brulte, Denham, McClintock, Morrow  
 NO VOTE RECORDED: Aanestad, Ackerman, Battin, Cedillo,  
       Hollingsworth, Johnson, Karnette, Knight, Margett,  
       McPherson, Oller, Poochigian, Soto

ASSEMBLY FLOOR : Not available

SUBJECT : Commercial e-mail advertisements

SOURCE : Author

DIGEST : This bill modifies recently enacted state law  
 banning e-mail spam to conform to recently enacted federal  
 law.

CONTINUED

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SB 1457

Assembly amendments : (1) delete provisions that would have prohibited anyone from collecting e-mail addresses or registering multiple e-mail addresses for purposes of the initiation or advertisement in an unsolicited commercial e-mail advertisement sent from California or to a California e-mail address; (2) delete the word "obscured" from existing law pertaining to commercial e-mails; and, (3) modify the penalty provisions.

ANALYSIS : This bill creates a "stand-alone" code section for falsified e-mails, including penalties, to avoid confusion as to what parts of existing state law are preempted by federal law and what parts remain viable. The penalties, which mirror those previously enacted in a related code section, allow the e-mail service provider, the Attorney General, or the recipient of an unsolicited commercial email advertisement to bring an action to recover damages of \$1,000 for each unsolicited e-mail (up to \$1 million per incident). The court is also authorized to award reasonable attorney's fees and costs to a prevailing plaintiff in violation of this section.

Comments

Background and Purpose. SB 186 (Murray), Chapter 487/Statutes of 2003, completely banned e-mail spam in California. To enforce this ban, SB 186 created a private right of action whereby a consumer or an internet service provider (ISP) could sue spammers and recover damages. Within months of its passage, SB 186 was preempted by a federal bill (S. 877), which allows for spam as long as various conditions are met. These conditions include offering the ability to opt-out, a valid e-mail address contact, and disclosure of the name and location of the spam sender. Although this federal measure preempted California's complete prohibition of spam, it did not preempt the private right of action consumers and ISPs have against those who send spam with misleading or falsified headers and information, as well as the advertisers of those products.

SB 1457 is intended to merely provide clean-up language and ensure such private right of action is not in conflict with

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federal law.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

According to the Assembly Appropriations Committee,  
negligible fiscal impact.

CP:nl 8/18/04 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

\*\*\*\* END \*\*\*\*