

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.



BRIAN SANDOVAL
Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

1325 Airmotive Way, Suite 340
Reno, Nevada 89502

Telephone (775) 688-1818

Fax (775) 688-1822

WEBSITE: <http://ag.state.nv.us>

E-Mail: aginfo@ag.state.nv.us

ANN WILKINSON
Assistant Attorney General

February 26, 2003

The Honorable Bernie Anderson, Chairman
Assembly Committee on the Judiciary
Nevada State Legislature
401 S. Carson Street
Carson City, NV 89701-4747

Re: A.B. 93 Anti-Spam Bill, February 27, 2003

Dear Chairman Anderson and Members of the Committee:

The Nevada High Technology Crime Task Force Advisory Board [the Board] has two bills this session. The first is A.B. 93, the Anti-Spam Bill and the second BDR 15-438 makes several technical changes to the legislation introduced by the Board last year. A.B. 93 has been introduced on behalf of the Task Force by this Committee.

The Board spent much of the last 2 years bringing the Nevada Cyber Crime Lab to fruition, and through its Executive Director setting up close working relationships among numerous law enforcement agencies in Nevada. While the lab spends much of its time dealing with on-line predators and child pornography, one of the most common areas of complaint is the receipt of unsolicited commercial email [UCE], more commonly know as Spam.

Everyone with an email address has come to expect a certain amount of Spam: get rich quick schemes, low interest rate loans and herbal remedies. More aggravating and offensive are the solicitations to buy Viagra, sexual paraphernalia and even pornography. Often times it is not until you have opened an email that you learn of its true contents; sometimes even being visually assaulted by pornographic images. For a summary of the impact of Spam, please see the report on S. 630 for the U.S. Senate Committee on Commerce, Science and Transportation, Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2002, of the "CAN-SPAM Act of 2002", submitted with this letter.

ASSEMBLY JUDICIARY

DATE: 2-27-03 ROOM 3138 EXHIBIT C

SUBMITTED BY: Kevin Higgins

C-1 of 3

Original on file in the Research Library

Nevada passed the first law in the country regulating UCE in 1997. See NRS 41.705 to 41.735. Patterned after the junk fax bill, it left enforcement in the hands of the consumer, requiring the victim to sue the offending sender for receipt of UCE. Each email received in violation of the act was subject to \$10 in damages.

Since 1997 many states and the federal government have struggled with the issues involved with regulating and prohibiting UCE. While some states have assumed enforcement authority in extreme cases, the Board did not believe that Nevada had sufficient resources to take on such a task. It is anticipated that the federal government may assume enforcement authority over Spam, much as it did for illegal telemarketing, through the Federal Trade Commission. In communicating with Senator Burns' staff, they intend to reintroduce S. 630 this session and are optimistic that it will pass.

While those issues are pending in Congress, A.B. 93 will give the Nevada law more teeth and make it more financially worthwhile for consumers to enforce. The proposed bill makes 3 changes to the existing statute:

1. Requires that the abbreviation 'ADV' or the word 'Advertisement' be the first word in the subject line of the email. If the sender complies with this requirement [as well as the others in NRS 41.730] the UCE in question would not be subject to damages under the statute. This would also allow the consumer to set a rule in his or her email program to automatically delete any emails with 'ADV' or 'Advertisement' in the subject line,
2. Increases the damages from \$10 per Spam to \$50, making it much more likely that the consumer would go to the effort to track down the sender. This would also make a class-action enforcement effort more likely if hundreds or thousands of pieces of Spam could be traced back to the sender.
3. Creates a higher level of violations, with damages of \$500 per UCE if the sender:
 - a. Disguised the source of the advertisement;
 - b. Used false or misleading information in the subject line of the email;
 - c. Provided a false return address;
 - d. Ignored requests made by the recipient to decline receiving email from the person;
 - e. Provided a false return address for declining additional email from that person; or
 - f. Obtained the electronic mail address of the recipient through a method that was not authorized by the recipient.

In addition to the \$500 per UCE in damages, the recipient may recover actual damages, if greater, as well as attorney's fees and costs.

Since 1997, 28 other states have enacted laws regulating Spam. See, Summary of United States Spam Laws, submitted with this letter. A.B. 93 adopts some of the provisions from other states and gives Nevada consumers a bigger hammer in the war against Spam.

Over the next 2 years the Office of the Attorney General and Chief Criminal Deputy Gerald Gardner will be reviewing the organization and jurisdiction of the existing white-collar fraud units. While it is certainly too early to make any commitments, during that review the OAG will consider whether it should seek criminal jurisdiction over high-tech and internet crimes. What, if any, role the office should play in the enforcement of the anti-Spam statutes will also be considered.

I look forward to discussing this bill with the Committee on February 27th. In the meantime if I could answer any questions or provide further background information on UCE, please call or email me.

Sincerely yours,

BRIAN SANDOVAL
Attorney General

By:



KEVIN HIGGINS
Regional Chief Deputy Attorney General
(775) 688-1818