

UT Internet Privacy Bill Fails in Committee; PA ISP Privacy Bills Advance; UT Pop-up Ad Bill Advances; IL Revolving Charges Bill Considered; WA Hearing on Internet Access Taxes Scheduled; WI Legislators Discuss Ticket Scalping; CT, IL, MD, TN, and WA Legislators to Debate Outsourcing; KS Hearings on SSTP Repeal.

Overview

The **Utah** House Public Utilities and Technology Committee failed to advance HB 216, the ISP and website operator opt-in/opt-out Internet privacy bill. However, the committee did advance a bill regulating pop-up advertisements. A **Pennsylvania** Senate committee passed two ISP Internet privacy bills. Committees in **Illinois** are holding hearings next week on a revolving charges bill aimed at ISPs and a bill regulating state contracts with ISPs. A **Washington** House committee will take testimony on a Senate bill extending the ban on local governments imposing Internet access taxes. A **Wisconsin** ticket scalping bill is expected to advance to the Senate floor, while an **Illinois** bill exempting Internet auctions from the ticket scalping law is scheduled for a hearing next week.

California's bill introduction deadline is today, Friday, February 20th. Hundreds of bills have been introduced in the last two days, 450 on the 19th, and a number of them are included in the following report. Sen. Kevin Murray, D-Los Angeles, has been especially prolific, introducing two spyware bills, a spam fraud bill, and a bill governing file sharing.

With the adjournment of **New Mexico**'s legislature this week, 40 states are now in session. The governor of New Mexico has 20 days to sign bills.

ISP Regulation and Privacy

The **Utah** House Public Utilities and Technology Committee discussed, but failed to advance, a new draft of HB 216, an ISP and website privacy bill. The **IA** has opposed the bill since it was introduced. The committee vote to advance the bill was 3-5 with four members absent. The latest version of the bill included language similar to that contained in a Nebraska law that passed last year (LB 118) making it illegal for an Internet business to make a false or misleading statement in a privacy policy. HB 216 also requires an Internet business to take reasonable steps to maintain a consumer's privacy; and provide a privacy notice to a consumer.

The bill could still be sent to the floor for consideration even if it has not passed a committee. In Utah, bills only need to have had a committee hearing to be eligible for a floor vote.

The **Pennsylvania** Senate Communications and Technology Committee advanced SB 704, a bill requiring ISPs to obtain subscribers' affirmative consent before sharing customer information. Sponsored by Committee Chair Jacob Corman, R-Centre, the bill requires ISPs to keep all

subscriber information confidential, except for the subscriber's email address. ISPs must also keep subscribers' email addresses confidential if requested. Written permission must be given before information can be shared.

The Senate Communications and Technology Committee also passed SB 705, a privacy policy bill also sponsored by Corman. The bill makes it a "fraudulent business practice" to publish false or misleading privacy policies including statements published or distributed on the Internet.

The bills are pending on the Senate floor.

The **Illinois** Senate Labor and Commerce Committee is meeting Wednesday, February 25th to hear testimony on SB 2858, legislation requiring ISPs to give a consumer at least 30 days notice before an annual service renewal date. Introduced by Sen. Richard Winkel, R-Champaign/Vermilion, the provisions only apply to agreements in which an ISP provides service to Illinois consumers for a one-year term that is automatically renewed unless a consumer cancels the service. The notice must include instructions for canceling the service through the ISP's web site. Consumers must not be required to make a telephone call or send U.S. Postal Service mail to cancel services.

The Illinois House State Government Administration Committee is also meeting on the 25th. The committee will take testimony on HB 4171, a bill requiring email services, provided under state contracts, to be "reasonably free" of spam. Sponsored by Rep. Ruth Munson, R-Cook/Kane, the contracted ESP is responsible for providing filtering, or other means, to limit the amount of unsolicited commercial email advertisements being received by state entity email addresses.

Spyware

The **Utah** House Public Utilities and Technology Committee this week substituted and passed HB 323, pop-up advertisement legislation. The bill, sponsored by the Committee Chair, Rep. Stephen Urquhart, R-Washington, prohibits the creation and installation of software used to generate pop-up advertisements. ISPs are exempted from prosecution. The substitute bill requires the Department of Commerce; Division of Consumer Protection to establish procedures for reporting violations of the new law. An earlier version gave that authority to the Attorney General. The bill is pending on the House floor.

1(800)CONTACTS, Overstock.com, and other businesses are the driving force behind HB 323. The companies found that free software available at grocery stores was guiding consumers using search engines to find 1(800)CONTACTS or overstock.com to their competitors' Websites. In addition, the software could not be uninstalled without reformatting the computer hard drives.

California Sen. Kevin Murray, D-Los Angeles, introduced two bills this week related to computer spyware. SB 1436 would require providers of computer software containing spyware to disclose and explain to the customer what the spyware does. Recipients of computer spyware transmitted in violation of the prohibitions, an ISP, or the Attorney General would be authorized to bring an action to recover actual damages or to recover liquidated damages of \$1,000 per transmission, plus reasonable attorney's fees and costs. The bill also prohibits the transmission

to a computer in California of software containing spyware in violation of the policy of the recipient's ISP.

Internet Access Taxes

The **Washington** House Technology, Telecommunications and Energy Committee will hold a hearing Tuesday, February 24th on SB 6259, a bill extending the ban on local governments imposing new taxes or fees on Internet services until July 1, 2006. The current ban expires July 1, 2004. Sponsored by Sen. Dave Schmidt, R-Snohomish, SB 6259 passed the Senate February 13th, 47-1. The House companion bill, HB 2560, has been pending in the House Finance Committee since introduction.

Auctions

The **Wisconsin** Senate Homeland Security, Veterans and Military Affairs, and Government Reform Committee this week took testimony on AB 556, legislation prohibiting cities, villages, towns, and counties from enacting laws prohibiting the resale of entertainment or sporting event tickets at or less than face value. There was no opposing testimony. Only the sponsor, Rep. Sheldon Wasserman, D-Milwaukee, and Rep. Scott Gunderson, R-Racine/Walworth/Waukesha, appeared to testify. AB 556 is now on a committee "paper ballot." Committee members have until 4:00 pm Friday, February 20th to turn in their votes to the committee clerk. AB 556 is expected to advance to the Senate floor.

The **Illinois** Senate Judiciary Committee is holding a public hearing Tuesday, February 24th on SB 3004, a bill exempting sales of tickets for Internet auction listing services, as long as it is registered with the Illinois Office of Banks and Real Estate. This is the first hearing for SB 3004, sponsored by Sen. Don Harmon, D-Cook/DuPage.

In **California**, Asm Nicole Parra, D-Fresno, this week introduced AB 2488, a bill making non-substantive changes to the definitions section of the escrow law, possibly indicating an intention to make substantive changes at a later date.

Spam

The **New Hampshire** House Criminal Justice and Public Safety Committee took testimony this week on two spam bills, but did not advance either.

No one testified in support of HB 1219, a bill prohibiting the distribution of unsolicited email containing obscene materials and creating a class B felony if an owner or operator of a computer on-line service, Internet service, local bulletin board service, or email service knowingly permits a subscriber to use the service to send obscene unsolicited email. Rep. Harriet Cady, R-Rockingham, the bill's sponsor, and five others opposed the bill.

The committee also heard testimony on HB 1341, a spam fraud bill with felony penalties. The testimony on this bill was less definitive, though still strongly leaning towards opposition, with local ISPs, the Software Association of New Hampshire and Rep. Lawrence Artz, R-Hillsborough, opposing the bill. Other than the bill's sponsors, Rep. Robert Letourneau, R-

Rockingham, and Sen. Robert Boyce, R-Belknap/Merrimack/Strafford, only the American Legislative Exchange Council testified in support of HB 1341.

California Senator Murray this week introduced SB 1487, which would prohibit false, misrepresented, obscured, forged, or misleading information in commercial email messages, and would further prohibit statements in commercial email messages that are deceptive with regard to the authorization by the recipient to send commercial email advertisements or regarding opting out of receiving future commercial email advertisements.

File Sharing

California Senator Murray has introduced SB 1506, making it a crime for a person not the copyright owner to knowingly electronically disseminate a commercial recording or audiovisual work without disclosing his or her true name and address, and the title of the recording or audiovisual work.

Outsourcing/Call Centers

The **Illinois** House State Government Administration Committee this week unanimously passed HB 4194, a bill prohibiting businesses or members of a unitary business group from submitting a bid for or entering into a contract with a State agency, if that business or any member of the unitary business group is an expatriate corporation. Sponsored by Rep. Gary Hannig, D-Christian/et al, HB 4194 is now on the House second reading calendar.

The **Tennessee** Senate State and Local Government Committee postponed this week's hearing on SB 2344, which limits state contracts to those companies whose workers are U.S. citizens, until Tuesday, February 24th. The Tennessee legislature is known to reschedule, but not hold, hearings for weeks before finally deciding not to move a bill. A hearing on the House companion bill, HB 2334, was also deferred this week in the House State and Local Government Committee until March 2nd.

The **Washington** House Commerce and Labor; House Trade and Economic Development; and House Technology, Telecommunications, and Energy Committees held a joint work session on outsourcing and globalization Thursday, February 19th. There are currently eight outsourcing bills pending in the Washington Legislature, HB 2351, HB 2352, HB 2405, HB 2768, HB 3186, HB 3187, SB 5103, and SB 5319.

Two other states have scheduled hearings next week on bills limiting state contracts with companies located outside of the United States. **Connecticut** HB 5171 will be heard in the Joint Government Administration and Elections Committee Monday, February 23rd. **Maryland** SB 362 will be heard in the Senate Education, Health, and Environmental Affairs Committee Thursday, February 26th.

California Sen. Liz Figueroa, D-Alameda/Santa Clara, this week introduced SB 1451, a placeholder privacy bill aimed at individuals or corporations that contract or subcontract with individuals located outside of the United States that handle or come into contact with private

medical and financial information. Sen. Figueroa also introduced SB 1453, requiring written notice of any outsourcing contract for 20 or more workers to the California Employment Development Department, as well as to any affected California employees whose jobs would be affected.

California Sen. Joe Dunn, D-Orange, introduced SB 1492, designed to ensure that no work involving information that is private, confidential, privileged, or essential to homeland security is performed at a worksite outside of the United States.

Streamlined Sales Tax

The **IA** this week sent testimony in support of **Kansas** legislation repealing streamlined sales tax provisions. The House Taxation Committee held three days of hearings on HB 2599 and HB 2700. According to staff, the committee took testimony from nearly 30 local and national industry representatives and trade groups. The majority of the testimony appeared to be supportive of the legislation. The House Taxation Committee will be holding a work session and could advance these bills February 20th.

In **California**, two competing local government funding initiatives are in the works, each of which would conflict with the Streamlined Sales and Use Tax Agreement (SSUTA), in that they specify allocation of sales taxes that would conflict with the allocation required under the SSUTA. Since the initiatives are constitutional amendments, it is unlikely that the legislature could override the allocation in order to adopt the Streamlined Sales and Use Tax Agreement. However, there is precedent for multistate tax organizations to ignore their agreements or compacts when it comes to determining whether a state qualifies for participation.

Two bills dealing with the SSTP and related issues were introduced in the **California** legislature this week. Senator Bowen introduced SB 1559, which eliminates the requirement for the board that represents California at the Streamlined Sales and Use Tax Agreement meetings to report to the legislature or to recommend statutory changes required to comply with the Streamlined Sales and Use Tax Agreement.

Asm. Ray Haynes, R-Riverside/San Diego, this week introduced AB 2061, which would define the level of presence required for the state to impose business activity taxes on entities engaged in interstate commerce. The bill does not affect local governments' ability to impose such taxes.

Financial Privacy and Identity Theft

California AB 664, sponsored by Asm. Lou Correa, D-Orange, has been amended to require that entities conducting business in California that share personal data with offices, affiliates, subcontractors, or subsidiaries outside of the United States disclose to the customer specific information about the information shared; including the category of personal information and country where the information is or may be shared. AB 664 passed the Assembly in late January and is currently in the Senate Governmental Organization Committee. Due to the change in subject matter, it will likely be assigned to a different committee.

California Sen. Debra Bowen, D-Los Angeles, this week introduced SB 1279, an identity theft bill, which would require credit reporting agencies to allow a password to be placed on a credit report by the subject, and would require entities accessing the credit report to use the password. The bill would also require two years of free credit monitoring to be provided to any data subject by any company that suffers a breach of security of that person's data. SB 1279 has not been referred to a committee.

Content

Pennsylvania District Court Judge Jan DuBois has postponed continued testimony until February 26th in the case filed by the Center for Democracy and Technology and the ACLU against Pennsylvania and the state Attorney General regarding the enforcement of the state's 2002 Internet child pornography blocking law. The case has been on hold since mid-January.