

SESSION OF 2008

SUPPLEMENTAL NOTE ON SENATE BILL NO. 434

As Recommended by Senate Committee on
Judiciary

Brief*

SB 434 would amend the Code of Civil Procedure to include the disclosure and discovery of electronically stored information for use in district court proceedings. The bill would:

- Add two new provisions to authorize a court to take appropriate action in pretrial conferences on disclosure and discovery of electronically stored information, and claims of privilege or protection as work product;
- Add a provision to limit discovery for electronically stored information not reasonably accessible due to undue burden or cost;
- Add a provision to require a receiving party to return privileged materials, or file privileged materials under seal, after being notified of an inadvertent disclosure;
- Add a provision to allow a party to respond to an interrogatory by producing electronically stored information;
- Add a provision to clarify that electronically stored information is distinct from “documents” and “things”;
- Add a new provision to create a safe harbor from sanctions relating to routine destruction of electronically stored information; and

*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>

- Add a provision to conform the subpoena statute with the new provisions relating to electronically stored information.

Background

The proponent of the bill was Nick Badgerow, Chairman of the Kansas Judicial Council Civil Code Advisory Committee. He testified that the amendments in the bill would conform the Kansas Code of Civil Procedure with the amendments made to the Federal Rules of Civil Procedure in 2006.

There was no testimony in opposition to the bill.

The fiscal note from the Division of Budget states there would be no fiscal effect on the Judiciary as a result of the passage of this bill.