

Approved:

Deena Horst
Date

5-4-01

Date

MINUTES OF THE E-GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Deena Horst at 3:38 p.m. on February 20, 2001, in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Audrey Nogle, Legislative Research Department
Lisa Montgomery, Revisor of Statutes' Office
Robert Chapman, Legislative Research Department
Jim Wilson, Revisor of Statutes' Office
Denise Richards, Committee Secretary

Conferees Appearing before the Committee:

Tim Sheehan, State Government Relations Manager, FreeMarket
Kevin Graham, Assistant Attorney General, Kansas Attorney General's Office
Jolene Grabill, Direct Marketing Association

Others attending: See attached sheet.

Representative Deena Horst recognized Representative Mary Pilcher Cook for the purpose of introducing Tim Sheehan. Representative Pilcher Cook pointed out some of the benefits for on-line bidding. She stated there is potential to streamline government purchasing costs and it can also increase revenues for government assets. (Attachment 1)

Tim Sheehan stated that his company, Freemarket, is Pittsburg based and was founded in 1995. Mr. Sheehan stated that \$14 billion dollars a year is spent on on-line bidding. Mr. Sheehan also pointed out all a person has to do is hook into their internet site and watch the bid unfold; all identity to the bidder is anonymous. He also said the benefits include taxpayer savings and improved efficiency.

Answering questions Mr. Sheehan said each supplier has access to the requirements of the item being bid. He also stated that the buyer can put in a reserve price. He pointed out that suppliers also have access to what amount is being bid.

The committee then discussed **HB 2478**. Representative Holmes pointed out that this bill is copied after legislation in Nebraska. Representative Holmes pointed out that one part of the bill that needs to be worked on is the penalty phase of the bill. There have been suggestions that this bill be a criminal penalty and not a civil penalty.

Answering questions Representative Holmes said if a virus originated in another state, Kansas would not be able to pursue the person in another state.

Robert Chapman, Legislative Research Department, gave a brief description on what this bill does. Mr. Chapman said the definition of computer contaminance is based on the California law. This bill does not address crimes originating out of Kansas. The Attorney General Office recommends a criminal penalty, which would be a Level 10, which include 5 to 7 months in jail. Mr. Chapman also stated out of state victims would be able to seek prosecution.

Kevin Graham, Assistant Attorney General, Criminal Division was called on to testify. Mr. Graham stated that Representative Horst and Holmes contacted his office to take a look at **HB 2478** to ask them what they thought of it and if there were any areas that needed to be changed. Mr. Graham stated that Steven Warrick, Deputy, Civil Protection Division, had a few recommendations; one was to impose a criminal penalty along with a possible fine and that has been done. Mr. Graham stated that the Attorney General's Office is appearing as a neutral party. He stated that means if the bill is adopted it would be a good addition to the current law. Mr. Graham said he had spoke with the computer staff of the Kansas Bureau of Investigation (KBI) about **HB 2478** and their only concern was the definition of internet domain, and that the definition of that might need to be tightened up. Mr. Graham's suggestion on the bill

was that it might be possible to amend on the provisions of the bill onto the current statute KSA 21-3755. His suggestion was to perhaps add in the million dollar fine. (Attachment 2)

Answering questions Kevin Graham pointed out that 22% of the money that is fined goes to the crime victim compensation and the vast majority goes to the state general fund. Mr. Graham stated he reads **HB 2478** as a criminal bill.

Jolene Grabill, Direct Marketing Association, stood in for Douglas E. Smith. Ms. Grabill stated they are supportive of this legislation but would like to have one word inserted on page 2, section 2, and that word is "intended." (Attachment 3)

Representative Deena Horst stated she felt the Judiciary Committee needed to look at **HB 2478**. Representative Horst then asked if anyone was in opposition to **HB 2478**, and there was none.

The meeting was adjourned at 4:50 p.m. The next meeting is scheduled for Thursday March 1, 2001, at 3:30 p.m. in Room 526-S.

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STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: E-GOVERNMENT
FEDERAL & STATE AFFAIRS
HIGHER EDUCATION
TAXATION

February 20, 2001

Private industries today are leveraging technology in many ways, allowing a higher productivity level with lower costs and greater revenues. Government has lagged farther and farther behind. We have become complacent about our processes and have shrugged off the innovation that produces positive growth. Government is known for its high costs and lack of efficiency.

In our e-government committee, we are determined to change the old and bring it up to date with the new. It is my impression that for many years Representative Jim Morrison has been one of the few who has worked very hard for this change and has had some great achievements. I want to thank him for all of his hard work and I am anxiously looking forward to our committee working with Representative Morrison in the future.

As we move forward with our recommendations, one of the quickest proposals to implement and get the greatest results is with on-line bidding. There is not only an immense potential to streamline government purchasing costs, it can also greatly increase revenues for government assets.

Through the availability of more complete information over the Internet with instant interaction, government has the opportunity to find lower priced goods and services with quicker cycle times and fewer errors. Dynamic pricing allows for more competition and access to new suppliers and better prices.

Dynamic Pricing Advantages

- Quick to implement with immediate results
- Streamlines government purchasing costs
- Increases revenue for government assets
- Enables finding lower priced goods and services
- Quicker cycle times with fewer errors
- More competition with access to new suppliers and better prices
- Reduced time spent dealing with suppliers and negotiating prices and terms of transactions

Examples

- Production materials (asphalt, concrete, lumber, etc.)
- Health insurance
- Travel
- Automobiles
- Financial services
- Books, paper
- Computers

Attachment 1

e-Gov 2-20-01



State of Kansas

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CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY OF
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM
BEFORE THE HOUSE E-GOVERNMENT COMMITTEE
RE: HOUSE BILL 2478
February 20, 2001

MAIN PHONE: (785) 296-2215
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Representative Horst and Members of the e-Government Committee:

Thank you for allowing me to appear today as a neutral party on the discussion of H. B. 2478, a criminal statute concerning the spreading of computer viruses and worms, attempting certain connections and prohibiting e-mail spamming. The Office of the Attorney General was asked to review H. B. 2478 and offer any comments on the application, scope and/or enforcement of the proposed new crime.

H. B. 2478 creates a new felony crime which is quite limited in scope. The new crime would carry a severity level 10 nonperson felony penalty, as well as a fine of up to \$1,000,000 per offense. The new crime would encompass three different types of action which may be paraphrased as follows:

1. Intentionally sending a "computer contaminant" to damage another computer, computer system or computer network;
2. Using special equipment or software that automatically dials random or sequential numbers to connect to other computers or computer systems via telephone lines;
3. Knowingly and without permission overloading or otherwise damaging another computer, computer system or computer network by using the internet domain name of another in connection with "spam" electronic mail messages.

Please note that the State of Kansas does have a current statute that deals with "computer crime." K.S.A. 2000 Supp. 21-3755 is captioned as "Computer crime; computer password disclosure; computer trespass." A copy of K.S.A. 2000 Supp. 21-3755 is attached to this testimony. As you will see, K.S.A. 2000 Supp. 21-3755 contains a broad set of provisions for dealing with many types of computer crimes. [See K.S.A. 2000 Supp. 21-3755 subsections (b), (c) and (d).] Depending on the type of crime committed, K.S.A. 21-3755 carries either a severity level 8 nonperson felony penalty, or a class A nonperson misdemeanor penalty.

When reviewing the types of criminal action which would potentially be prosecuted under H. B. 2478 it appears that most of those actions would currently be subject to prosecution under K.S.A. 2000 Supp. 21-3755. For example, an individual intentionally sending a computer virus or “worm” into another computer or computer system to do damage could currently be prosecuted under K.S.A. 2000 Supp. 21-3755(b)(1)(A) or (b)(1)(C). Likewise, sending “spam” e-mail to a computer, computer system or network with the intention of overloading that network could be prosecuted under K.S.A. 2000 Supp. 21-3755(b)(1)(A) or (b)(1)(C). If these crimes were prosecuted under K.S.A. 2000 Supp. 21-3755 as opposed to H. B. 2478 the offender could face a more substantial criminal sentence. On the other hand, if the individual were prosecuted under H. B. 2478 there would be the potential for a much more substantial fine.

However, H. B. 2478 does contain a criminal provision which is not covered under current law. H. B. 2478 allows for the prosecution of individuals who “employ any equipment or software to connect to a computer, computer system or computer network by dialing telephone numbers which are produced or selected by a random or sequential number generator.” In light of the decision in the case of *State v. Allen*, 260 Kan. 107 (1996), this offense would likely not be subject to prosecution under current law. The *Allen* decision held, in part, that simply randomly dialing into another computer without getting beyond the computer’s security devices did not amount to “accessing” the computer under the definition at K.S.A. 21-3755.

In light of the potential overlap between K.S.A. 2000 Supp. 21-3755 and H. B. 2478, it is suggested that the e-Government Committee explore the idea of amending the best features of H. B. 2478 onto K.S.A. 2000 Supp. 21-3755 as opposed to creating a new, more limited statute. The addition of the higher potential fines provision and the automated random telephone dialing technology provision from H. B. 2478 to the current language of K.S.A. 2000 Supp. 21-3755 could create a stronger and even more flexible “computer crimes” law for the State of Kansas.

Direct Marketing Association

TESTIMONY HOUSE E-GOVERNMENT COMMITTEE HOUSE BILL NO. 2478 February 20, 2001

Chairman Horst and Honorable Members of the House E-Government Committee:

Thank you for the opportunity to present the testimony of the Direct Marketing Association (DMA) on House Bill No. 2478. The Direct Marketing Association serves as a professional trade association for direct marketers, with over 4,700 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917.

The Direct Marketing Association supports House Bill No. 2784 and would like to offer an amendment.

On Page 2; Line 1, we would amend the line to read

(2) employ any equipment or software **intended** to connect to a computer,

Members of the Direct Marketing Association utilize computer equipment know as an "automatic dialing-announcing device". This equipment will produce a random or sequential listing of telephone numbers and begin dialing these telephone numbers to make connections for an attendant. Our intent is to contact consumers, not computers with this dialing system. However, some consumers may have a computer or other device connected to the telephone line we are dialing and these devices may answer the line. When this computer to computer connection is made our telephone equipment will automatically disconnect the line.

We believe that House Bill No. 2784, as it is written, would immediately put our members in violation of the act and subject them to civil penalties for the possibility of clearly unintentional connection.

We urge the Committee to adopt this amendment as you consider House Bill No. 2784.

Thank you for your consideration.

Douglas E. Smith

*Attachment 3
e-Gov 2-20-01*

HOUSE BILL No. 2478

By Committee on Utilities

2-9

AN ACT concerning computers; relating to computer contaminants, mis-identified electronic mail and attempting certain connections; prohibiting certain acts and providing penalties for violations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record or transmit information within a computer, computer system or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record or transmit data, or in some other fashion usurp the normal operation of the computer, computer system or computer network.

(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer system" means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control.

(4) "Internet domain name" means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy.

(b) No person, using a computer located in this state, shall:

(1) Knowingly introduce any computer contaminant into the internet or any computer, computer system or computer network; or

[intended

1 (2) employ any equipment or software to connect to a computer,
2 computer system or computer network by dialing telephone numbers
3 which are produced or selected by a random or sequential number gen-
4 erator; or

5 (3) knowingly and without permission use the internet domain name
6 of another in connection with the sending of one or more electronic mail
7 messages and thereby damage or cause damage to a computer, computer
8 system or computer network.

9 (c) Any violation of subsection (b) is a severity level 10, nonperson
10 felony. In addition to any term of imprisonment, the fine for such violation
11 shall be not more than \$1,000,000 for each violation. An aggrieved party
12 is not a required party in actions brought by the attorney general or a
13 county or district attorney pursuant to this section.

14 Sec. 2. This act shall take effect and be in force from and after its
15 publication in the statute book.

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