

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on January 25, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Brungardt (Excused)  
Senator Kerr (Excused)

Committee staff present: April Holman, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Sherman Perks, Revisor of Statutes  
Lea Gerard, Secretary

Conferees appearing before the committee: Steve Rarrick, Deputy Attorney General Consumer Protection  
Jerry Niebaum, Planning Coordinator for KAN-ED

Others attending: See attached list.

Steve Rarrick introduced a bill proposed by the Attorney General that would provide protection to Kansans from deceptive and unwanted spam (unsolicited bulk email, or "junk" email) (Attachment 1).

Senator Jordan moved, seconded by Senator Jenkins to introduce a bill that would provide consumer protection from unwanted "junk" email to Kansas consumers. The motion carried. Chairperson Brownlee asked the Revisor of Statutes to draft the bill.

Chairperson welcomed Jerry Niebaum, Planning Coordinator for KAN-ED who presented a review on the status of KAN-ED, a project assigned to the Kansas Board of Regents in the legislative session of 2001 (Attachment 2). The KAN-ED Council developed a CD-ROM to share the vision of KAN-ED which will be available the first of February and presented to all members of the Kansas Legislature. The website for KAN-ED is [www.kan.ed.org](http://www.kan.ed.org).

The meeting was adjourned at 9:30 a.m.

The next meeting will be held Tuesday, January 29, 2002 at 8:30 a.m.





CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

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Testimony of  
Steve Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the Senate Commerce Committee  
RE: bill introduction  
January 25, 2002

Chairperson Brownlee and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to introduce a bill for your consideration. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The anti-spam bill proposed by the Attorney General is modeled in part after a Washington State law and would provide protections to Kansans from deceptive and unwanted spam (unsolicited bulk email, or "junk" email).

I have a draft of the proposal for your review, and would be happy to answer questions of the Chair or any member of the Committee.

Senate Commerce Committee

1-25-02  
Attachment 1-7

## Attorney General Anti-Spam Bill Proposal

New Section 1. As used in this act:

(a) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates the Kansas Consumer Protection Act.

(b) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting property or services for sale or lease.

(c) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(d) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the Kansas Consumer Protection Act.

(e) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(f) "Internet domain name" refers to 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 right-most string specifying the top of the hierarchy.

New Section 2. No person shall:

(a) Initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message from a computer located in Kansas or to an electronic mail address that the sender knows, or has reason to know, is held by a Kansas resident that:

(1) uses a third party's internet domain name without permission of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message;

(2) contains false or misleading information in the subject line;

(3) does not contain as the first four characters of the subject line "ADV:"

(4) does not contain instructions, in text at least as large as the majority of the text in the transmission, for the recipient to follow to notify the sender not to send any subsequent communications, with either:

(i) an electronic mail address to which the recipient may reply to notify the sender not to send any subsequent communications; or

(ii) the legal name of the person or entity initiating the transmission, including such person or entity's physical address for the receipt of the United States Mail and a toll-free telephone number that the recipient may call to notify the sender not to send any subsequent communications.

(5) contains advertising material for viewing, use, consumption, sale, lease, or rental only by persons over 18 years of age, including but not limited to content of sexual, sexually explicit or otherwise adult-oriented nature, unless the first eight characters of the subject line are "ADV:ADLT".

(b) Initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message from a computer located in Kansas or to an electronic mail address that the sender knows, or has reason to know, is held by a Kansas resident that is made after the recipient thereof has notified the sender not to send any subsequent communications;

(c) Give, transfer, sell, or otherwise share with another the electronic mail address of any recipient who has notified the sender not to send any subsequent communications for any use other than for the third party to place the address on a do not contact list.

(d) Assist in the transmission of a commercial electronic mail message, when the person providing the assistance knows, or consciously avoids knowing, that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any act or practice that violates the Kansas Consumer Protection Act.

(e) For purposes of this section, a person knows or has reason to know that the intended recipient of a commercial electronic mail message is a Kansas resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

(f) Any violation of this section is an unconscionable act and practice under the Kansas Consumer Protection Act.

(g) Any person alleging a violation of this section shall be deemed a consumer who has been aggrieved by a violation of the Consumer Protection Act and to have suffered actual loss as referred to in K.S.A. 50-634 and 50-636 and amendments thereto.

(h) Any person alleging a violation of this section may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section, and amendments thereto, and such person shall be considered a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.

(i) Any person that violates this section shall be subject to a civil penalty of not less than \$500 nor more than \$10,000 for each such violation instead of the penalty provided for in subsection (a) of K.S.A. 50-636, and amendments thereto.

(j) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the Kansas Consumer Protection Act. A violation of this section is not reasonable or necessary for the development and preservation of commerce and is an unconscionable act in violation of the Kansas Consumer Protection Act.

(k) This section shall be a part of and supplemental to the Kansas Consumer Protection Act.

(l) This section shall be known as the commercial electronic mail act.



# KANSAS BOARD OF REGENTS

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## *Creating the Kansas Information Highway for Schools, Libraries, & Hospitals*

Testimony for the Senate Commerce Committee about KAN-ED,  
By Jerry Niebaum, January 25, 2002

Members of the Committee I am here today at the request of Senator Brownlee to provide a status report on KAN-ED, a project assigned to the Kansas Board of Regents in the legislative session of 2001. For the past 20 years I've been a university administrator in computing and networking for the University of Kansas. Since last May I've been on special assignment as KAN-ED Planning Coordinator for the Board of Regents.

Governor Graves signed the KAN-ED Act into law on April 20, 2001. Many of you played important roles in the creation and passage of that legislation. We in education, healthcare, and libraries are grateful to you for your foresight and efforts in moving forward in this important way.

The KAN-ED Act says the following:

"The purpose of this act is to provide for a broadband technology-based network to which schools, libraries and hospitals may connect for broadband Internet access and intranet access for distance learning. For that purpose, the state board of regents shall contract in accordance with this act for the creation, operation and maintenance of such network to be known as the KAN-ED network."

In May 2001 Dr. Kim Wilcox, President and CEO of the Kansas Board of Regents, with advice from Vice Chancellor, Marilu Goodyear, University of Kansas, and Vice Provost, Beth Unger, Kansas State University, created a 12 person KAN-ED User Advisory Council. Dr. Wilcox selected 3 members to represent higher education and asked the Commissioner of Education and the President of the Kansas Hospital Association each to select 3 members to represent their user communities. For libraries he selected the State Librarian, Duane Johnson, and asked the President of the Kansas Library Association to select 2 members. The Council met for the first time on July 18 at the Maner Conference Center here in Topeka.

Members of the Council are:

Fred Atchison, Manhattan Public Library  
Mel Chastain, Kansas State University  
David Cook, University of Kansas Medical Center  
Hal Gardner, Kansas Department of Education  
Jane Hatch, Coffey County Library System  
Melissa Hungerford, Kansas Hospital Association

Senate Commerce Committee  
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Attachment 2-1

Duane Johnson, Kansas State Library  
Les Lacy, Cheyenne County Hospital – St. Francis  
Deborah Ludwig, Johnson County Community College  
Nancy Malone, Central Christian College – McPherson  
Milt Pippenger (Chair), Garden City Schools – USD #457  
Greg Rasmussen (Vice Chair), Wichita Schools – USD #259

In his charge to the Council Dr. Wilcox said, "... I ask that you present to me your recommendation for a comprehensive architectural and fiscal plan for KAN-ED by November 1 of this year. From those recommendations, I hope to craft a plan for presentation to the Board of Regents for their approval in December."

But why are we doing this at all? Why is it important for Kansas to have a comprehensive communications network for schools, libraries, and hospitals? Last Fall our public schools opened with more than 500 unfilled teaching positions. Many of these vacancies were in rural communities where it has been especially difficult to recruit qualified teachers. In the areas of Physics, Chemistry, Mathematics, and Foreign Languages the shortages are acute. Many of our schools continue to offer courses in these disciplines through interactive distance learning from other communities. We have about 11 unique interactive distance learning networks in the state many of which cannot communicate with other networks. Currently, only about half our school districts have access to this technology. With KAN-ED interactive distance learning can reach all our school districts.

Rural health care continues to be a great concern for our state. One reason it is difficult to recruit and retain healthcare workers in rural areas is professional isolation. With KAN-ED we expect to reduce that isolation by interactive collaboration and education. We also will make it possible to extend telemedicine resources to all hospitals in Kansas.

The backbone of the state economy is and will be small business. The future of rural Kansas depends on such business. Many business owners and entrepreneurs rely on resources of their community public library for guidance on creating and operating their business. The economic growth of our state will depend on their success. With KAN-ED we expect to provide information resources through local libraries to help insure their success.

In early November 2001 the KAN-ED User Advisory Council completed the report requested by Dr. Wilcox. At his request we presented it to the Board of Regents at their December meeting. Earlier this month our report was endorsed by the Board and also by the Kansas Board of Education. The report is available on our Web site:  
<http://www.kan-ed.org>

One of our Council members, Mel Chastain, Kansas State University offered to develop a multimedia presentation to share the vision of KAN-ED with others. A CD-ROM has been created and has been sent out for mass reproduction. I'd like to share a portion of that presentation with you now.

Video 1

Throughout the process of designing a plan the Council has been assisted by representatives from the communications and electronics industries. They have participated in nearly all our meetings and actively wrote parts of the appendices of our report. Specifically, Cox Communications, Southwestern Bell, and Sprint contributed staff and also funded the majority of the \$19,500 cost of creating the media production. I'm pleased to report that Cisco Systems, Pioneer Communications, and Technology Solutions funded the balance of that expense.

Video 2

Schematic

I'd like to mention some other partners who have worked with me and with the Council to craft our plan: KanREN (Kansas Research and Education Network), KDLC (Kansas Distance Learning Consortium), KAIDE (Kansas Association for Interactive Education), and DISC (Division of Information Systems and Communications).

I would be remiss in not acknowledging the excellent work of the User Advisory Council and the work groups they created to assist the process. They have a shared passion for learning, for service, and for improving the quality of life for citizens of our great state.

So, where are we now? Last week KAN-ED signed a contingent agreement with DISC to create and manage the KAN-ED backbone network. This 3-year agreement is contingent on obtaining appropriate state and federal funding to move forward. DISC, working with common carriers, local telephone companies, and other communications providers, has the expertise and the experience to create a cost-effective reliable network to serve all our citizens.

We are projecting annual expenses of nearly \$12 million to create and operate this network. Last week, thanks to the good work of my assistant, Jolene Witkin, we completed our application for up to \$2.5 million funding from the federal universal service fund also called the e-rate fund. We are seeking \$10 million in direct state funding. Donations will be accepted today. Promises of donations will be accepted at any time.

I will try to address your questions as best I can.