

IOWA

The original provisions governing the transmission of bulk commercial electronic mail were Sections 714E.1 and 714E.2 of the *Iowa Code*. Those code sections, originally enacted in 1999, were repealed, effective July 1, 2005, and replaced by Sections 716A.1 through 716A.7 of the *Iowa Code*. Those code sections:

- Make it illegal to falsify "transmission information or other routing information";
- Ban the distribution of software to designed to falsify routing information;
- Forbid a person other than a medical professional to offer prescription drugs via email;
- Classify a violation as an unfair trade practice;
- Entitle a recipient or service provider to sue a violator for damages, costs, and attorney's fees, as well as an injunction against further violations;
- Authorize the Attorney General to seek restitution from a violator and to seek an injunction against further violations; and
- Impose criminal penalties on violators, and provide for the forfeiture of assets gained as a result of violating the law.

Iowa Code

§716A.1. Definitions Pertaining to Transmission of Electronic Mail

As used in this chapter [§§716A.1-716A.7], unless the context otherwise requires:

1. "Computer" means the same as defined in §702.1A.
2. "Computer data" means the same as defined in §702.1A.
3. "Computer network" means the same as defined in §702.1A.
4. "Computer operation" means arithmetic, logical, monitoring, storage, or retrieval functions, or any combination thereof, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. "Computer operation" for a particular computer may also mean any function for which the computer was generally designed.
5. "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations.
6. "Computer services" means computer time or services, including data processing services, internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.
7. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with computer data or with computer operation, a computer program, or a computer network.
8. "Electronic mail service provider" means a person who does either of the following:
 - 8.a. Is an intermediary in sending or receiving electronic mail.
 - 8.b. Provides to end users of electronic mail services the ability to send or

receive electronic mail.

9. "Encryption" means the enciphering of intelligible data into unintelligible form or the deciphering of unintelligible data into intelligible form.

10. "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data, a computer program, or computer software.

11. "Person" means the same as defined in §4.1.

12. "Property" means all of the following:

12.a. Real property.

12.b. Computers, computer equipment, computer networks, and computer services.

12.c. Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether they are any of the following:

12.c.(1) Tangible or intangible.

12.c.(2) In a format readable by humans or by a computer.

12.c.(3) In transit between computers or within a computer network or between any devices which comprise a computer.

12.c.(4) Located on any paper or in any device on which it is stored by a computer or by a person.

13. "Uses" means, when referring to a computer or computer network, causing or attempting to cause any of the following:

13.a. A computer or computer network to perform or to stop performing computer operations.

13.b. The withholding or denial of the use of a computer, computer network, computer program, computer data, or computer software to another user.

13.c. A person to put false information into a computer.

Created by Chapter 123, §1, Laws of 2005, effective July 1, 2005.

§716A.2 Crimes Involving Transmission of Unsolicited Bulk Electronic Mail

1. A person who does any of the following is guilty of an aggravated misdemeanor:

1.a. Uses a computer or computer network with the intent to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

1.b. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or otherwise distribute computer software that does any of the following:

1.b.(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information.

1.b.(2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information.

1.b.(3) Is marketed by that person acting alone or with another for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

2. A person is guilty of a class "D" felony for committing a violation of subsection (1) when either of the following apply:
 - 2.a. The volume of unsolicited bulk electronic mail transmitted exceeds 10,000 attempted recipients in any 24-hour period, 100,000 attempted recipients in any 30-day time period, or 1,000,000 attempted recipients in any 12-month time period.
 - 2.b. The revenue generated from a specific unsolicited bulk electronic mail transmission exceeds \$1,000 or the total revenue generated from all unsolicited bulk electronic mail transmitted to any electronic mail service provider by the person exceeds \$50,000.
3. A person is guilty of a class "D" felony if the person knowingly hires, employs, uses, or permits a person less than 18 years of age to assist in the transmission of unsolicited bulk electronic mail in violation of subsection (2).
4. Transmission of electronic mail from an organization to a member of the organization shall not be a violation of this section.

Created by Chapter 123, §2, Laws of 2005, effective July 1, 2005.

§716A.3 Advertising Prescription Drugs by Electronic Mail

1. The retail sale or offer of direct retail sale of a prescription drug, as defined in §155A.3, through the use of electronic mail or the internet by a person other than a licensed pharmacist, physician, dentist, optometrist, podiatric physician, or veterinarian, is prohibited. A person who violates this subsection is guilty of a simple misdemeanor.
2. A person who knowingly sells an adulterated or misbranded drug through the use of electronic mail or the internet is guilty of a class "D" felony. However, if the death of a person occurs as the result of consuming a drug, as defined in §155A.3, sold in violation of this section, the violation is a class "B" felony.

Created by Chapter 123, §3, Laws of 2005, effective July 1, 2005.

716A.5 Venue for Criminal Prosecutions

For the purpose of venue, a violation of this chapter shall be considered to have been committed in any county in which any of the following apply:

1. An act was performed in furtherance of any course of conduct which violated this chapter.
2. The owner has a place of business in the state.
3. An offender has control or possession of any proceeds of the violation, or of any books, records, documents, property, financial instrument, computer software, computer program, computer data, or other material or objects used in furtherance of the violation.
4. Access to a computer or computer network was made by wires, electromagnetic waves, microwaves, or any other means of communication.
5. The offender resides.
6. A computer which is an object or an instrument of the violation is located at the

time of the alleged offense.
Created by Chapter 123, §5, Laws of 2005, effective July 1, 2005.

§716A.6 Remedies Against Violators

1. A person who is injured by a violation of this chapter may bring a civil action seeking relief from a person whose conduct violated this chapter and recover any damages incurred including loss of profits, attorney fees, and court costs.
2. A person who is injured by the transmission of unsolicited bulk electronic mail in violation of this chapter, may elect, in lieu of actual damages, to recover either of the following:
 - 2.a. The lesser of \$10 for each unsolicited bulk electronic mail message transmitted in violation of this chapter, or \$25,000 per day the messages are transmitted by the violator.
 - 2.b. \$1 for each intended recipient of an unsolicited bulk electronic mail message where the intended recipient is an end user of the electronic mail service or \$25,000 for each day an attempt is made to transmit an unsolicited bulk electronic mail message to an end user of the electronic mail service provider.
- 3.a. A violation of this chapter is a violation of §714.16(2)(a) [*which generally forbids unfair or deceptive practices directed at consumers*]. All the powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed pursuant to §714.16 are also conferred upon the Attorney General to enforce this chapter, including, but not limited to, the power to issue subpoenas, adopt rules which shall have the force of law, and seek injunctive relief and civil penalties.
 - 3.b. In seeking reimbursement pursuant to §714.16(7) [*which governs consumer fraud suits brought by the Attorney General*] from a person who has committed a violation of this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under subsection (1) or (2), for each consumer who has a cause of action pursuant to this section. §714.16, as it relates to consumer reimbursement, shall apply to consumer reimbursement pursuant to this section.
4. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person, and to protect any trade secrets of any party and in such a way as to protect the privacy of nonparties who complain about violations pursuant to this section.
5. This section shall not be construed to limit a person's right to pursue any additional civil remedy otherwise allowed by law.
6. An action brought pursuant to this section shall be commenced before the earlier of five years after the last act in the course of conduct constituting a violation of this chapter or two years after the injured person discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of this chapter.
7. Personal jurisdiction may be exercised over any person who engages in any conduct in this state governed by this chapter.
8. The injured person shall not have a cause of action against the electronic mail service

provider that merely transmits the unsolicited bulk electronic mail over its computer network.
Created by Chapter 123, §6, Laws of 2005, effective July 1, 2005.

§716A.7. Civil Forfeiture of Violator's Property

All property, including all income or proceeds earned but not yet received from a third party as a result of a violation of this chapter, used in connection with a violation of this chapter, known by the owner thereof to have been used in violation of this chapter, shall be subject to seizure and forfeiture pursuant to Chapter 809A [*the Forfeiture Reform Act*].

Created by Chapter 123, §7, Laws of 2005, effective July 1, 2005.