

# OKLAHOMA

Title 15, Sections 776.1 through 776.7 of the *Oklahoma Statutes Annotated* govern the transmission of electronic mail. Those code sections:

- Apply to email sent to or through the equipment of a service provider located in Oklahoma;
- Forbid a sender to put false information in an email's subject line, falsify its routing information, or distribute software designed to falsify routing information;
- Bar a sender from using another person's email address or domain name without permission; and
- Require a sender to put a label in the subject line of a commercial or sexually-oriented email;
- Bar the sending of email containing false, malicious, or misleading information that injures another;
- Require a sender to provide a mechanism by which the recipient can ask not to be contacted, and forbid the sending of email to those individuals;
- Impose civil penalties on violators;
- Entitle a recipient or a service provider to sue a violator for damages, costs, and attorney's fees; and
- Classify violations as Consumer Protection Act violations.

## **Okla. Stat. Ann., Title 15**

### **§776.1. Fraudulent Electronic Mail; Penalty**

A. It shall be unlawful for a person to initiate an electronic mail message that the sender knows, or has reason to know:

- A.1. Misrepresents any information in identifying the point of origin or the transmission path of the electronic mail message;
- A.2. Does not contain information identifying the point of origin or the transmission path of the electronic mail message;
- A.3. Contains false, malicious, or misleading information which purposely or negligently injures a person;
- A.4. Falsely represents that it is being sent by a legitimate online business;
- A.5. Refers or links the recipient of the message to a web page that is represented as being associated with a legitimate online business with the intent to engage in conduct involving the fraudulent use or possession of identifying information; or
- A.6. Directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information for a purpose the recipient believes is legitimate.

B. Any person violating the provisions of this section shall be subject to a civil penalty of up to \$500.

C. All acts and practices declared to be unlawful by subsections (A) and (E) of this section shall, in addition, be violations of the Oklahoma Consumer Protection Act.

D. For purposes of this section, an electronic mail message which is declared to be unlawful by subsection (A) of this section shall be considered a fraudulent electronic mail message or a fraudulent bulk electronic mail message.

E. It shall be unlawful for any person to sell, give, or otherwise distribute or possess with the intent to sell, give or distribute software which:

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

E.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; or

E.3. Is marketed by that person or another acting in concert with that person and with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

*Created by Chapter 337, §1, Session Laws of 1999, effective July 1, 1999. Amended by Chapter 56, §1, Session Laws of 2006, effective November 1, 2006.*

### **§776.2. Remedies Against Violators**

A. Any person whose property or person is injured by reason of a violation of any provision of this act [Title 15, §§776.1-776.4] may sue for and recover any damages sustained, and also recover the costs of bringing the suit. The term "damages" shall include but shall not be limited to the loss of profits.

B. If the injury arises from the transmission of fraudulent electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney fees and costs. In lieu of actual damages, the injured person may elect to recover the lesser of \$10 for each unsolicited bulk electronic mail message transmitted in violation of this act, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the fraudulent electronic mail over its computer network.

C. If the injury arises from the transmission of fraudulent electronic mail, an injured electronic mail service provider may also recover attorney fees and costs. In lieu of actual damages, the injured electronic mail service provider may elect to recover the greater of \$10 for each fraudulent electronic mail message transmitted in violation of this act, or \$25,000 per day.

D. 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.

E. The provisions of this act shall not be construed to limit any right of a person to pursue any additional civil remedy otherwise allowed by law.

*Created by Chapter 337, §2, Session Laws of 1999, effective July 1, 1999.*

### **§776.3. Jurisdiction Over Electronic Mail Transmissions**

Transmitting or causing the transmission of fraudulent electronic mail to or through a computer network of an electronic mail service provider located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. Nothing contained in this act shall limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to the provision of any other law.

*Created by Chapter 337, §3, Session Laws of 1999, effective July 1, 1999.*

#### **§776.4. Definitions Pertaining to Fraudulent Electronic Mail**

For purposes of §§1 through 3 of this act [*Title 15, §§776.1-776.3*]:

1. "Electronic mail messages" means a message, file, or other information that is transmitted through a local, regional, or global network regardless of whether the message, file, or other information is viewed, stored for retrieval at a later time, printed on to paper or other similar material, or is filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail;
2. "Fraudulent electronic mail message" or "fraudulent bulk electronic mail message" means any electronic mail message or bulk electronic mail message which is declared unlawful by §1(A) of this act [*Title 15, §776.1(1)(A)*];
3. "Initiate the transmission" means the action of the original sender of an electronic mail message, not to the action by any intervening computer service that may handle or retransmit the message;
4. "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities; and
5. "Electronic mail service provider" means any person who:
  - 5.a. is an intermediary in sending or receiving electronic mail, and
  - 5.b. provides to end-users of electronic mail services the ability to send or receive electronic mail.
6. "Identifying information" means information that alone or in conjunction with other information identifies an individual, including but not limited to:
  - 6.a. name, social security number, date of birth, and government-issued identification number,
  - 6.b. unique biometric data, including the fingerprint, voice print, and retina or iris image of an individual,
  - 6.c. unique electronic identification number, address, and routing code, financial institution account number, and
  - 6.d. telecommunication identifying information or access device; and
7. "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

*Created by Chapter 337, §4, Session Laws of 1999, effective July 1, 1999. Amended by Chapter 56, §2, Session Laws of 2006, effective November 1, 2006.*

#### **§776.5. Definitions Pertaining to Commercial Electronic Mail**

For purposes of §§1 through 3 of this act [*Title 15, §§776.5-776.7*]:

1. "Electronic mail" means an electronic message or computer file containing an image of a message that is transmitted between two or more computers or electronic

terminals and includes electronic messages that are transmitted within or between computer networks;

2. "Electronic mail service provider" means any person who:

- 2.a. is an intermediary in sending or receiving electronic mail, and
- 2.b. provides to end-users of electronic mail services the ability to send or receive electronic mail;

3. "Established business relationship" means a prior or existing relationship formed by a voluntary communication between a person or entity and the recipient with or without an exchange of consideration, on the basis of an inquiry, application, purchase or use by the recipient regarding products or services offered by such person or entity;

4. "Unsolicited commercial electronic mail message" means a commercial electronic mail message sent without the consent of the recipient, by a person with whom the recipient does not have an established business relationship. "Unsolicited commercial electronic mail message" does not include electronic mail messages where the sender:

- 4.a. is an organization using electronic mail to communicate exclusively with its members,
- 4.b. is an organization using electronic mail to communicate exclusively with its employees or contractors, or both,
- 4.c. has the consent of the recipient, or
- 4.d. has an established business relationship with the recipient, as defined in this section; and

5. "Commercial electronic mail message" means an electronic mail message sent for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services. Commercial electronic mail message does not include an electronic mail message:

- 5.a. to which an electronic mail service provider has attached an advertisement in exchange for free use of an electronic mail account, when the user has agreed to the arrangement,
- 5.b. between persons with a prior business relationship, or
- 5.c. between persons with a personal relationship.

*Created by Chapter 129, §1, Session Laws of 2003, effective November 1, 2003. Amended by Chapter 310, §1, Session Laws of 2003, effective November 1, 2003.*

#### **§776.6. Prohibited Acts Involving Commercial Electronic Mail**

A. It shall be a violation of this act for any person to transmit a commercial electronic mail message that:

- A.1. Falsifies electronic mail transmission information or other routing information for the unsolicited commercial electronic message; or
- A.2. Contains false or misleading information in the subject line.

B. It shall be a violation of this act for any person that sends a commercial electronic mail message to use a third party's internet address or domain name without the third party's consent for the purpose of transmitting electronic mail in a way that makes it appear that the third party was the sender of such mail.

C. It shall be a violation of this act for any person that sends an unsolicited commercial

electronic mail message to fail to use the exact characters "ADV:" as the first four characters in the subject line of an unsolicited commercial electronic mail message.

D. It shall be a violation of this act for any person that sends an unsolicited commercial electronic mail message containing sexually explicit material, or advertising sexually explicit goods or services, to fail to use the exact characters "ADV-ADULT:" as the first 10 characters in the subject line of such an unsolicited commercial electronic mail message.

E. It shall be a violation of this act for any person that sends an unsolicited commercial electronic mail message to fail to provide a mechanism allowing recipients to easily and at no cost remove themselves from the sender's electronic mail address lists so they are not included in future mailings. A sender of an unsolicited commercial electronic mail message shall remove the recipient from their electronic mail message list if the sender receives an electronic mail message from the recipient to the sender-operated return electronic mail address that indicates anywhere in the subject line or text that the recipient wants their name removed from the list of the sender.

*Created by Chapter 129, §2, Session Laws of 2003, effective November 1, 2003. Amended by Chapter 310, §2, Session Laws of 2003, effective November 1, 2003.*

#### **§776.7. Recipient's and Service Provider's Remedies**

A. Any person whose property or person is injured by reason of a violation of any provision of this act may recover any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits.

B. If the injury arises from the transmission of unsolicited or commercial electronic mail messages, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited commercial electronic mail message transmitted in violation of this act, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider, which merely transmits the unsolicited commercial electronic mail message over its computer network.

C. If the injury arises from the transmission of unsolicited or commercial electronic mail messages, an injured electronic mail service provider may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the greater of \$10 for each and every unsolicited commercial electronic mail message transmitted in violation of this act, or \$25,000 per day.

D. All acts and practices declared to be unlawful in §2 of this act [*Title 15, §776.2*] shall, in addition, be violations of the Oklahoma Consumer Protection Act.

E. 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.

F. An e-mail service provider does not violate this section and the injured party shall not have a cause of action against an electronic mail provider due to the fact that the electronic mail provider:

F.1. Is an intermediary between the sender and the recipient in the transmission of an

electronic mail message that violates this section; or

F.2. Provides transmission of unsolicited commercial electronic mail messages over the provider's computer network or facilities, or shall be liable for any action it voluntarily takes in good faith to block the receipt or transmission through its service of any electronic mail advertisements that it believes is, or will be sent, in violation of this section.

*Created by Chapter 129, §3, Session Laws of 2003, effective November 1, 2003. Amended by Chapter 310, §3, Session Laws of 2003, effective November 1, 2003.*