

# OREGON

Chapter 759, Sections 1 through 8, 11, and 13 of the 2003 Laws of Oregon, which have been codified as notes following Section 646.578 of the *Oregon Revised Statutes*, govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to email sent to an Oregon resident;
- Forbid a person to use another's domain name without permission;
- Make it illegal to put false information in the subject line of an email, or to misrepresent an email's routing information;
- Require the sender of an unsolicited commercial email to put a label on its subject line; and
- Entitle a recipient, a service provider, or a person whose domain name was used without permission to sue the violator for damages and attorney's fees.

## Chapter 759, 2003 Laws of Oregon

### §1. Legislative Declaration

(1) The Legislative Assembly finds:

(1)(a) The economic harm and invasion of privacy resulting from the transmission and receipt of unsolicited commercial electronic mail messages constitute a threat to the welfare of the people of this state.

(1)(b) Unsolicited commercial electronic mail messages cost Oregonians hundreds of thousands of dollars each year because of:

(1)(b)(A) The need to acquire additional capacity for computer systems;

(1)(b)(B) The need to acquire software programs to filter and control unsolicited commercial electronic mail messages;

(1)(b)(C) The transmission of computer viruses by unsolicited commercial electronic mail messages; and

(1)(b)(D) Time and productivity lost when businesses and public bodies must devote personnel resources:

(1)(b)(D)(i) To creating and maintaining local electronic mail message filters;

(1)(b)(D)(ii) To removing infestations of unsolicited commercial electronic mail messages from networks and individual mailboxes;

(1)(b)(D)(iii) To unclogging transmission paths; and

(1)(b)(D)(iv) To repairing and restarting computer systems that have experienced resulting system failures.

(1)(c) Unsolicited commercial electronic mail messages can be used to transmit pornographic material in a manner that is not readily apparent to recipients, which can result in the exposure of minors to pornographic material.

(1)(d) Existing state and federal laws are inadequate to prevent the harm to the public welfare that results from the transmission and receipt of unsolicited commercial electronic mail messages.

(1)(e) Requiring persons that transmit unsolicited commercial electronic mail messages to label the messages in a manner readily recognizable by a recipient will enable recipients to recognize unsolicited commercial electronic mail messages and choose whether to avoid receiving or reading the messages.

(2) The purpose of §§3(2) and 4 of this 2003 Act is to prevent the harmful effects set forth in subsection (1)(b) and (1)(c) of this section, which result from the receipt of unsolicited

electronic mail messages that are not labeled in a manner readily recognizable by a recipient as unsolicited electronic mail messages. Requiring persons that transmit unsolicited electronic mail messages to label the messages as set forth in §4 of this 2003 Act enables recipients of unsolicited electronic mail messages to recognize and choose whether to avoid receiving and reading the messages.

*Created by Chapter 759, §1, Laws of 2003, effective January 1, 2004.*

## **§2. Definitions Pertaining to Unsolicited Electronic Mail**

As used in §§1 to 8 of this 2003 Act:

(1) "Business relationship" means a voluntary exchange of communication initiated by an electronic mail message recipient's inquiry about, application for or purchase or use of real estate, goods or services.

(2) "Commercial electronic mail message" means an electronic mail message transmitted for the purpose of encouraging the purchase, rental or investment in real estate, goods or services.

(3) "Control" has the meaning given that term in §60.825.

(4) "Domain name" means an alphanumeric designation that is registered with or assigned by a domain name registrar as part of an electronic address on the Internet.

(5) "Electronic mail message" means an electronic message or computer file that contains an image of a message transmitted between computers or electronic terminals. "Electronic mail message" does not include a document transmitted by a facsimile machine as defined in §646.872.

(6) "Electronic mail service provider" means a person that provides:

(6)(a) An end user with electronic mail message services, including the ability to send or receive electronic mail messages; and

(6)(b) A system that connects the user to a computer server and the Internet.

(7) "Person" has the meaning given that term in §646.605.

(8) "Subsidiary" means a person that directly, or indirectly through one or more intermediaries, is controlled by, or is under common control with, another person.

(9) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient.

*Created by Chapter 759, §2, Laws of 2003, effective January 1, 2004.*

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

In the course of offering real estate, goods or services for sale, rent or other disposition, a person may not:

(1) Transmit, ask another person to transmit or assist in the transmission of an electronic mail message that:

(1)(a) Uses an Internet domain name without permission of the person that holds the license to use the name;

- (1)(b) Contains false or misleading information in the subject line; or
- (1)(c) Misrepresents or hinders a person from determining the point of origin or transmission path of the electronic mail message.

(2) Transmit, ask a person to transmit or assist in the transmission of an unsolicited commercial electronic mail message to a person in this state.

*Created by Chapter 759, §3, Laws of 2003, effective March 1, 2004.*

#### **§4. Conduct Not Considered a Violation**

(1) §3(2) of this 2003 Act does not apply if:

(1)(a) The person that transmits the electronic mail message:

(1)(a)(A) Has established a business relationship with the person that receives the electronic mail message;

(1)(a)(B)(i) Controls the person that established the business relationship; and

(1)(a)(B)(ii) Offers to the person that receives the electronic mail message real estate, goods or services offered by the person that established the business relationship;

(1)(a)(C)(i) Is a subsidiary of the person that established the business relationship;

(1)(a)(C)(ii) Shares the principal name of the person that established the business relationship;

(1)(a)(C)(iii) Is located on the same premises as the person that established the business relationship; and

(1)(a)(C)(iv) Offers to the person that receives the electronic mail message real estate, goods or services offered by the person that established the business relationship;

(1)(a)(D) Is an organization and the electronic mail message is solely to communicate with a member, employee or contractor of the organization; or

(1)(a)(E) Labels the message by including in the subject line the term "ADV:" in a type size readily visible to the recipient. The label shall immediately follow the colon after the word "subject" or some abbreviation of the word "subject"; or

(1)(b) The predecessor of the person that transmits the electronic mail message had a business relationship with the person that receives the electronic mail message.

(2) §3 of this 2003 Act does not apply to an electronic mail service provider acting only as an intermediary between the persons that transmit and receive the electronic mail message.

*Created by Chapter 759, §4, Laws of 2003, effective January 1, 2004.*

#### **§5. Recipient's or Victim's Remedies Against Violator**

(1) A person whose Internet domain name is used without permission in violation of §3(1)(a) of this 2003 Act may bring an action against the person that violated §3(1)(a) of this 2003 Act to recover actual damages or liquidated damages of \$500, whichever is greater.

(2) A person that receives an electronic mail message transmitted in violation of §3(1)(b) or (3)(1)(c) of this 2003 Act may bring an action against the person that violated §3(1)(b) or (3)(1)(c) of this 2003 Act to recover actual damages or liquidated damages of \$500, whichever is greater.

(3) A person that receives an electronic mail message transmitted in violation of §3(2) of this 2003 Act may bring an action against the person that violated §3(2) of this 2003 Act to recover actual damages or liquidated damages of \$200, whichever is greater.

(4) The remedies provided by subsections (1) to (3) of this section apply to each electronic mail message transmitted in violation of §3 of this 2003 Act. If the person elects to recover liquidated damages in lieu of actual damages, the court may not award the person more than \$25,000 per day.

(5) An award of liquidated damages on a claim under this section is not subject to §§31.725, 31.730, or 31.735 [*which govern awards of punitive damages*].

(6)(a) A person who is an individual may bring the action in the circuit court of the county in which the individual resides.

(6)(b) A person that is not an individual may bring the action in the circuit court of a county in which the person maintains an office.

(7) The court may award reasonable attorney fees to a plaintiff that prevails in an action on a claim under this section.

(8) The remedies provided in this section are in addition to and not exclusive of any other remedy provided by law of this state.

*Created by Chapter 759, §5, Laws of 2003, effective March 1, 2004.*

## **§6. Service Provider's Remedies Against Violator**

(1) An electronic mail service provider whose service is used by a person to transmit an electronic mail message in violation of §3(1) of this 2003 Act may bring an action against the person that violated §3(1) of this 2003 Act to recover actual damages or liquidated damages of \$1,000, whichever is greater.

(2) An electronic mail service provider whose service is used by a person to transmit an electronic mail message in violation of §3(2) of this 2003 Act may bring an action against the person that violated §3(2) of this 2003 Act to recover actual damages or liquidated damages of \$1,000, whichever is greater.

(3) The remedies provided by subsections (1) and (2) of this section apply to each electronic mail message transmitted in violation of §3 of this 2003 Act. If the person elects to recover liquidated damages in lieu of actual damages, the court may not award the person more than \$25,000 per day.

(4) An award of liquidated damages on a claim under this section is not subject to §§31.725, 31.730, or 31.735.

(5) The electronic mail service provider may bring the action in the circuit court of a county in which:

(5)(a) The provider maintains an office; or

(5)(b) The person that violated §3 of this 2003 Act has sufficient contacts for the court to exercise personal jurisdiction over the person.

(6) The court may award reasonable attorney fees to an electronic mail service provider that prevails in an action on a claim under this section.

(7) The remedies provided in this section are in addition to and not exclusive of any other remedy provided by law of this state.

*Created by Chapter 759, §6, Laws of 2003, effective March 1, 2004.*

### **§7. Service Provider's Immunity for Good-Faith Actions**

If an electronic mail service provider acts in good faith to block the receipt, or transmission through the provider's service, of electronic mail messages that the provider anticipates persons will transmit in violation of §3 of this 2003 Act, a court may not, for blocking receipt or transmission of the electronic mail messages, find the provider to be in violation of §3 of this 2003 Act.

*Created by Chapter 759, §7, Laws of 2003, effective January 1, 2004.*

### **§8. Restrictions on Class Action Lawsuits**

Notwithstanding Rule 32 of the Rules of Civil Procedure [*which governs class action lawsuits*], a court may not order an action to be maintained as a class action if the action includes a claim under §5 of this 2003 Act and the person against which the claim is asserted had, at the time of the transmission of the electronic mail message that forms the basis of the claim, established a business relationship with the person that received the message.

*Created by Chapter 759, §8, Laws of 2003, effective January 1, 2004.*

### **§11. Applicability of Anti-Spam Statute**

(1) §3 of this 2003 Act applies to transmissions of electronic mail messages occurring on or after March 1, 2004.

(2) §§5 and 6 of this 2003 Act and the amendments of §646.607 by §9 of this 2003 Act apply to violations occurring on or after March 1, 2004.

*Created by Chapter 759, §11, Laws of 2003, effective January 1, 2004.*

### **§13. Sunset Date of Anti-Spam Statute**

§§1 to 8 and 11 of this 2003 Act are repealed on January 2, 2006.

*Created by Chapter 759, §13, Laws of 2003, effective January 1, 2004.*

### **Or. Rev. Stat.**

### **§646.607. Prohibited Acts in Connection With Business**

A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person:

- (1) Employs any unconscionable tactic in connection with sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation;

(2) Violates §3, Chapter 759, Oregon Laws 2003; or

(3) Fails to deliver all or any portion of real estate, goods or services as promised, and upon request of the customer, fails to refund any money that has been received from the customer that was for the purchase of the undelivered real estate, goods or services and that is not retained by the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer.

*Amended by Chapter 744, §7, Laws of 1971; Chapter 235, §2, and Chapter 513, §1, Laws of 1973; Chapter 437, §1, Laws of 1975; Chapter 195, §2, Laws of 1977; Chapter 503, §4, Laws of 1979; Chapter 404, §5, Laws of 1983; Chapter 251, §10a, Chapter 538, §3, Chapter 694, §8, and Chapter 729, §22, Laws of 1985; Chapter 626 §5, Laws of 1987; Chapter 273, §7, Chapter 451, §4, Chapter 458, §3, Chapter 621, §4, Chapter 622, §7, Chapter 623, §3, and Chapter 913, §1, Laws of 1989; Chapter 532, §25, and Chapter 672, §8, Laws of 1991; Chapter 58, §3, Chapter 283, §10, Chapter 582, §11, Chapter 645, §10, and Chapter 700, §2, Laws of 1993; Chapter 713, §6, and Chapter 788, §2, Laws of 1995; Chapter 132, §6, and Chapter 806, §2, Laws of 1997; Chapter 194, §9, Chapter 400, §4, Chapter 669, §3, Chapter 719, §3, and Chapter 875, §3, Laws of 1999; Chapter 924, §11, and Chapter 969, §5, Laws of 2001; and Chapter 759, §9, Laws of 2003, effective March 1, 2004.*