

ENROLLED HOUSE
BILL NO. 1410

By: Perry, Deutschendorf and
Smith (Hopper) of the House

and

Coffee of the Senate

An Act relating to telecommunications; making it unlawful to transmit electronic mail messages with false or with no internet domain name; making it unlawful to transmit electronic mail messages containing certain misleading or false information; providing for a civil remedy; making the unlawful activity a violation of the Oklahoma Consumer Protection Act; providing term for certain electronic mail messages; making it unlawful to sell or distribute certain software; stating purpose and use of the software; allowing certain injured persons to recover certain damages; defining damages; allowing recovery of certain costs; allowing certain recovery in lieu of damages; prohibiting certain cause of action; allowing certain injured electronic mail service providers to recover certain costs and certain recovery; authorizing the court to protect secrecy and security of computer systems; allowing additional civil remedy; making certain actions within the state; providing for jurisdiction over certain persons; providing for definitions; providing for travel reimbursement for members of the Electronic Commerce Pilot Program Steering Committee; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

1. Misrepresents any information in identifying the point of origin or the transmission path of the electronic mail message;

2. Does not contain information identifying the point of origin or the transmission path of the electronic mail message; or

3. Contains false, malicious, or misleading information which purposely or negligently injures a person.

B. Any person violating the provisions of this section shall be subject to a civil penalty of up to Five Hundred Dollars (\$500.00).

C. All acts and practices declared to be unlawful by subsection 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:

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

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

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.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Any person whose property or person is injured by reason of a violation of any provision of this act 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 Ten Dollars (\$10.00) for each unsolicited bulk electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars (\$25,000.00) 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 Ten Dollars (\$10.00) for each fraudulent electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars (\$25,000.00) 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

For purposes of Sections 1 through 3 of this act:

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 subsection A of Section 1 of this act;

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:

- a. is an intermediary in sending or receiving electronic mail, and

- b. provides to end-users of electronic mail services the ability to send or receive electronic mail.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5060.52 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Members of the Electronic Commerce Pilot Program Steering Committee created in Section 5060.50 of Title 74 of the Oklahoma Statutes shall receive no compensation for serving on the Committee, but shall receive travel reimbursement as follows:

1. Legislative members of the Committee shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes from the legislative body in which they serve;

2. State agency employees who are members of the Committee shall be reimbursed for travel expenses incurred in the performance of their duties by their respective agencies in accordance with the State Travel Reimbursement Act; and

3. All other Committee members shall be reimbursed by the Department of Central Services for travel expenses incurred in performance of their duties on the Committee, in accordance with the State Travel Reimbursement Act.

SECTION 6. This act shall become effective July 1, 1999.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 28th day of May, 1999.

President of the Senate