STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2794 By: Perry

COMMITTEE SUBSTITUTE

An Act relating to computer crimes; amending 15 O.S. 2001, Section 776.1, which relates to fraudulent electronic mail messages; prohibiting misrepresentation of contents of electronic messages; authorizing forfeiture of computer equipment under certain circumstances; authorizing certain entities to file forfeiture proceedings; establishing procedure; providing for distribution of proceeds; defining term; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2001, Section 776.1, is amended to read as follows:

Section 776.1 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 or the contents 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~~ 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:

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 1959 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any peace officer of this state is authorized to seize any computer equipment which is used in the violation of the Oklahoma Computer Crimes Act subsequent to a criminal conviction of a violation of the Oklahoma Computer Crimes Act involving the use of that computer equipment. The equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the computer equipment and any other party in interest may file a verified answer and claim to the computer equipment described in the notice of seizure and intended forfeiture proceeding.

D. If, at the end of sixty (60) days after the notice has been mailed or published and there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing, the party seeking the forfeiture shall prove by clear and convincing evidence that the computer equipment was used in violation of the Oklahoma Computer Crimes Act with the knowledge of the owner of the computer equipment and that there has been a criminal conviction involving the use of that computer equipment.

G. The owner or party in interest may prove that the right or interest in the computer equipment was created without any knowledge or reason to believe that the computer equipment was being used for the purpose charged.

H. In the event of such proof, the court may order the computer equipment released to the bona fide or innocent owner or party in

interest if the amount due the person is equal to, or in excess of, the value of the computer equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the computer equipment, or if no bona fide claim is established, the computer equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

J. Computer equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the computer equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking forfeiture of the computer equipment may release the computer equipment to the owner of the computer equipment if it is determined that the owner had no knowledge of the illegal use of the computer equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the computer equipment. Computer equipment which has not been released by the district attorney or the party seizing the equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

K. The district attorney or the party seizing the computer equipment shall not be held civilly liable for having custody of the seized computer equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any computer equipment not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the computer equipment, if any, up to the amount of the

interest of the person in the computer equipment, when the court declaring the forfeiture orders a distribution to the person;

2. To the payment of the actual expenses of preserving the computer equipment; and

3. The balance to a revolving fund to be used and maintained for any purpose by the municipal or county law enforcement department that made the seizure with a yearly accounting to the governing board of that county or municipal law enforcement agency. Monies from the fund may be used to pay costs for the storage of the computer equipment if the computer equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if monies are available in the fund.

M. The proceeds of the sale of any computer equipment seized, taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the computer equipment, if any, up to the amount of the interest of the person in the computer equipment, when the court declaring the forfeiture orders a distribution to the person;

2. To the payment of the actual expenses of preserving the computer equipment; and

3. The balance to a revolving fund of the agency seizing the computer equipment to be used and maintained as a revolving fund for law enforcement purposes by the agency seizing the computer equipment. Monies from the fund may be used to pay costs for the storage of the computer equipment if the computer equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor.

N. When any computer equipment is forfeited pursuant to this section, the district court of jurisdiction may order that the computer equipment seized may be retained by the state, county, or municipal law enforcement agency which seized the computer equipment for its official use.

O. If the court finds that the computer equipment was not used in violation of the Oklahoma Computer Crimes Act, the court shall order the computer equipment released to the owner.

P. No computer equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of the owner, or by any person other than the owner while the computer equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

Q. For purposes of this section, "computer equipment" includes computers, computer networks, computer programs, computer software, computer systems, data, property, services and supporting documentation as those terms are defined in Section 1952 of Title 21 of the Oklahoma Statutes, computer printers and any computer accessories being used in conjunction with computer equipment.

SECTION 3. This act shall become effective November 1, 2002.

48-2-8821 LAC 6/12/15