

ENROLLED SENATE
BILL NO. 660

By: Coffee and Gumm of the
Senate

and

Perry and Davis of the
House

An Act relating to contracts; defining terms; prohibiting transmittal of specified commercial electronic mail messages and unsolicited commercial electronic mail messages; providing for recovery of specified costs and damages for certain persons; defining damages; allowing recovery of certain costs; allowing certain recovery in lieu of damages; prohibiting certain cause of action; providing for recovery of specified costs and damages for certain electronic mail service providers; authorizing the court to protect secrecy and security of computer systems; providing exception for electronic mail service provider from acts which are in violation and create a cause of action; providing for codification; and providing an effective date.

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 776.5 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" 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:

- 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;

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:

- a. is an organization using electronic mail to communicate exclusively with its members,
- b. is an organization using electronic mail to communicate exclusively with its employees or contractors, or both,
- c. has the consent of the recipient, or
- 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.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.6 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

1. Falsifies electronic mail transmission information or other routing information for the unsolicited commercial electronic message; or

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 ten 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 776.7 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 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 attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of Ten Dollars (\$10.00) for each and every unsolicited commercial 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, 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 attorneys' fees and costs and may elect, in lieu of actual damages, to recover the greater of Ten Dollars (\$10.00) for each and every unsolicited commercial 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. 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:

1. Is an intermediary between the sender and recipient in the transmission of an electronic mail message that violates this section; or

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.

SECTION 4. This act shall become effective November 1, 2003.

Passed the Senate the 24th day of February, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of April, 2003.

Presiding Officer of the House
of Representatives