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**THE STATE SENATE**  
**Thursday, February 13, 2003**

**Senate Bill No. 660**

SENATE BILL NO. 660 - By: COFFEE of the Senate and PERRY 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:

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

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

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

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

17           a.    is an organization using electronic mail to  
18                    communicate exclusively with its members,

19           b.    is an organization using electronic mail to  
20                    communicate exclusively with its employees or  
21                    contractors, or both,

22           c.    has the consent of the recipient, or

1           d.    has an established business relationship with the  
2                    recipient, as defined in this section; and

3           5.    "Commercial electronic mail message" means an electronic  
4 mail message sent for the purpose of encouraging the purchase or  
5 rental of, or investment in, property, goods or services.

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

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

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

14           2.   Contains false or misleading information in the subject  
15 line.

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

21           C.   It shall be a violation of this act for any person that  
22 sends an unsolicited commercial electronic mail message to fail to

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

3 D. It shall be a violation of this act for any person that  
4 sends an unsolicited commercial electronic mail message to fail to  
5 provide a mechanism allowing recipients to easily and at no cost  
6 remove themselves from the sender's electronic mail address lists so  
7 they are not included in future mailings.

8 SECTION 3. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 776.7 of Title 15, unless there  
10 is created a duplication in numbering, reads as follows:

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

15 B. If the injury arises from the transmission of unsolicited or  
16 commercial electronic mail messages, the injured person, other than  
17 an electronic mail service provider, may also recover attorneys'  
18 fees and costs, and may elect, in lieu of actual damages, to recover  
19 the lesser of Ten Dollars (\$10.00) for each and every unsolicited  
20 commercial electronic mail message transmitted in violation of this  
21 act, or Twenty-five Thousand Dollars (\$25,000.00) per day. The  
22 injured person shall not have a cause of action against the  
23 electronic mail service provider, which merely transmits the

1 unsolicited commercial electronic mail message over its computer  
2 network.

3 C. If the injury arises from the transmission of unsolicited or  
4 commercial electronic mail messages, an injured electronic mail  
5 service provider may also recover attorneys' fees and costs and may  
6 elect, in lieu of actual damages, to recover the greater of Ten  
7 Dollars (\$10.00) for each and every unsolicited commercial  
8 electronic mail message transmitted in violation of this act, or  
9 Twenty-five Thousand Dollars (\$25,000.00) per day.

10 D. At the request of any party to an action brought pursuant to  
11 this section, the court may, in its discretion, conduct all legal  
12 proceedings in such a way as to protect the secrecy and security of  
13 the computer, computer network, computer data, computer program and  
14 computer software involved in order to prevent possible recurrence  
15 of the same or a similar act by another person and to protect any  
16 trade secrets of any party.

17 E. An email service provider does not violate this section and  
18 the injured party shall not have a cause of action against an  
19 electronic mail provider due to the fact that the electronic mail  
20 provider:

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-11-03 - DO  
9 PASS, As Coauthored.