

EHB 2473

THE STATE SENATE
Thursday, March 23, 2006

ENGROSSED

House Bill No. 2473

ENGROSSED HOUSE BILL NO. 2473 - By: PERRY, WRIGHT, INGMIRE and NANCE
of the House and COFFEE of the Senate.

An Act relating to technology; amending 15 O.S. 2001,
Sections 776.1 and 776.4, which relates to unlawful
electronic mail messages; making certain electronic mail
messages unlawful; updating statutory language; adding
certain definitions; creating the Anti-Phishing Act;
providing for definitions; prohibiting persons from creating
and using web pages with certain fraudulent intent; allowing
certain persons to bring civil actions for violations of the
act; providing damages; authorizing courts to increase
damages in certain circumstances; allowing recovery of
certain fees and costs; making unlawful acts under act
violations of the Oklahoma Consumer Protection Act;
exempting certain actions by telecommunications providers or
Internet service providers from the act; 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 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

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

3 4. Falsely represents that it is being sent by a legitimate on-
4 line business;

5 5. Refers or links the recipient of the message to a web page
6 that is represented as being associated with a legitimate on-line
7 business with the intent to engage in conduct involving the
8 fraudulent use or possession of identifying information; or

9 6. Directly or indirectly induces, requests, or solicits the
10 recipient of the electronic mail message to provide identifying
11 information for a purpose the recipient believes is legitimate.

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

14 C. All acts and practices declared to be unlawful by ~~subsection~~
15 subsections A and E of this section shall, in addition, be
16 violations of the Oklahoma Consumer Protection Act.

17 D. For purposes of this section, an electronic mail message
18 which is declared to be unlawful by subsection A of this section
19 shall be considered a fraudulent electronic mail message or a
20 fraudulent bulk electronic mail message.

21 E. It shall be unlawful for any person to sell, give, or
22 otherwise distribute or possess with the intent to sell, give or
23 distribute software which:

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

4 2. Has only limited commercially significant purpose or use
5 other than to facilitate or enable the falsification of electronic
6 mail transmission information or other routing information; or

7 3. Is marketed by that person or another acting in concert with
8 that person and with that person's knowledge for use in facilitating
9 or enabling the falsification of electronic mail transmission
10 information or other routing information.

11 SECTION 2. AMENDATORY 15 O.S. 2001, Section 776.4, is
12 amended to read as follows:

13 Section 776.4 For purposes of Sections ~~±~~ 776.1 through ~~³~~ 776.3
14 of this ~~act~~ title:

15 1. "Electronic mail messages" means a message, file, or other
16 information that is transmitted through a local, regional, or global
17 network regardless of whether the message, file, or other
18 information is viewed, stored for retrieval at a later time, printed
19 on to paper or other similar material, or is filtered or screened by
20 a computer program that is designed or intended to filter or screen
21 items of electronic mail;

22 2. "Fraudulent electronic mail message" or "fraudulent bulk
23 electronic mail message" means any electronic mail message or bulk

1 electronic mail message which is declared unlawful by subsection A
2 of Section ~~4~~ 776.1 of this ~~act~~ title;

3 3. "Initiate the transmission" means the action of the original
4 sender of an electronic mail message, not to the action by any
5 intervening computer service that may handle or retransmit the
6 message;

7 4. "Computer network" means a set of related, remotely
8 connected devices and any communications facilities including more
9 than one computer with the capability to transmit data among them
10 through the communications facilities; ~~and~~

11 5. "Electronic mail service provider" means any person who:
12 a. is an intermediary in sending or receiving electronic
13 mail, and
14 b. provides to end-users of electronic mail services the
15 ability to send or receive electronic mail;

16 6. "Identifying information" means information that alone or in
17 conjunction with other information identifies an individual,
18 including but not limited to:

19 a. name, social security number, date of birth, and
20 government-issued identification number,
21 b. unique biometric data, including the fingerprint,
22 voice print, and retina or iris image of an
23 individual,

- 1 c. unique electronic identification number, address, and
2 routing code, financial institution account number,
3 and
4 d. telecommunication identifying information or access
5 device; and

6 7. "Web page" means a location that has a single uniform
7 resource locator (URL) with respect to the world wide web or another
8 location that can be accessed on the Internet.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 776.8 of Title 15, unless there
11 is created a duplication in numbering, reads as follows:

12 Sections 4 through 7 of this act shall be known and may be cited
13 as the "Anti-Phishing Act".

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 776.9 of Title 15, unless there
16 is created a duplication in numbering, reads as follows:

17 As used in the Anti-Phishing Act:

18 1. "Electronic mail" means a message, file, or other
19 information that is transmitted through a local, regional, or global
20 computer network, regardless of whether the message, file, or other
21 information is viewed, stored for retrieval at a later time,
22 printed, or filtered by a computer program that is designed or
23 intended to filter or screen those items;

1 2. "Electronic mail address" means a destination, commonly
2 expressed as a string of characters, to which electronic mail may be
3 sent or delivered;

4 3. "Identifying information" means information that alone or in
5 conjunction with other information identifies an individual,
6 including but not limited to:

7 a. name, social security number, date of birth, and
8 government-issued identification number,

9 b. unique biometric data, including the fingerprint,
10 voice print, and retina or iris image of an
11 individual,

12 c. unique electronic identification number, address, and
13 routing code, financial institution account number,
14 and

15 d. telecommunication identifying information or access
16 device;

17 4. "Internet domain name" refers to a globally unique,
18 hierarchical reference to an Internet host or service, assigned
19 through a centralized Internet naming authority and composed of a
20 series of character strings separated by periods with the right-most
21 string specifying the top of the hierarchy; and

1 5. "Web page" means a location that has a single uniform
2 resource locator (URL) with respect to the world wide web or another
3 location that can be accessed on the Internet.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 776.10 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 A person may not, with the intent to engage in conduct involving
8 the fraudulent use or possession of the identifying information of a
9 person:

10 1. Create a web page or Internet domain name that is
11 represented as a legitimate on-line business without the
12 authorization of the registered owner of the business; and

13 2. Use that web page or a link to the web page, that domain
14 name, or another site on the Internet to induce, request, or solicit
15 another person to provide identifying information for a purpose that
16 the other person believes is legitimate.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 776.11 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The following persons may bring a civil action against a
21 person who violates the Anti-Phishing Act:

1 1. A person engaged in the business of providing Internet
2 access service to the public who is adversely affected by the
3 violation; or

4 2. An owner of a web page or trademark who is adversely
5 affected by the violation.

6 B. A person bringing an action under this Act may:

7 1. Seek injunctive relief to restrain the violator from
8 continuing the violation;

9 2. Recover damages in an amount equal to the greater of:

10 a. actual damages arising from the violation, or
11 b. One Hundred Thousand Dollars (\$100,000.00) for each
12 violation of the same nature; or

13 3. Seek both injunctive relief and recover damages as provided
14 for in this subsection.

15 C. The court may increase an award of actual damages in an
16 action brought under this section to an amount not to exceed three
17 times the actual damages sustained if the court finds that the
18 violations have occurred with a frequency as to constitute a pattern
19 or practice.

20 D. A plaintiff who prevails in an action filed under this
21 section is entitled to recover reasonable attorney fees and court
22 costs.

1 E. For purposes of this section, violations are of the same
2 nature if the violations consist of the same course of conduct or
3 action, regardless of the number of times the conduct or act
4 occurred.

5 F. All acts and practices declared to be unlawful under this
6 Act shall, in addition, be violations of the Oklahoma Consumer
7 Protection Act.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 776.12 of Title 15, unless there
10 is created a duplication in numbering, reads as follows:

11 The Anti-Phishing Act shall not apply to the good faith
12 transmission or routing of, or intermediate temporary storing or
13 caching of, identifying information by a telecommunications provider
14 or Internet service provider.

15 SECTION 8. This act shall become effective November 1, 2006.

16 COMMITTEE REPORT BY: COMMITTEE ON AEROSPACE, COMMUNICATIONS &
17 TECHNOLOGY, dated 3-21-06 - DO PASS.