

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2473

By: Perry

AS INTRODUCED

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~~
3. Contains false, malicious, or misleading information which purposely or negligently injures a person;
4. Falsely represents that it is being sent by a legitimate on-line business;

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

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

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

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

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 ~~±~~ 776.1 of this ~~act~~ title;

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;

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

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

- b. unique biometric data, including the fingerprint, voice print, and retina or iris image of an individual,
- c. unique electronic identification number, address, and routing code, financial institution account number, and
- d. telecommunication identifying information or access device; and

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

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

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

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

As used in the Anti-Phishing Act:

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

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

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

- a. name, social security number, date of birth, and government-issued identification number,
- b. unique biometric data, including the fingerprint, voice print, and retina or iris image of an individual,
- c. unique electronic identification number, address, and routing code, financial institution account number, and
- d. telecommunication identifying information or access device;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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