

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2810

By: Walke

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6 AS INTRODUCED

7 An Act relating to the privacy of email  
8 communications; enacting the Oklahoma E-Mail  
9 Communication Content Privacy Protection Act;  
10 defining terms; prohibiting email service providers  
11 from scanning certain information; providing  
12 exclusive jurisdiction to the Oklahoma Corporation  
13 Commission for enforcement; providing for complaint  
14 process; requiring investigation of complaints;  
15 authorizing Commission to examine books, records,  
16 files, computer hardware and related assets;  
17 providing for presentation of evidence; providing for  
18 findings of fact and conclusions of law; providing  
19 for effect of final order and appeal procedures;  
20 authorizing order to enjoin activity based on  
21 repetitive violations; authorizing penalty amounts;  
22 prescribing maximum penalty amounts; providing for  
23 apportionment of penalty amounts; creating the  
24 Oklahoma E-Mail Communication Content Privacy  
Protection Revolving Fund; providing for expenditure  
of monies and prescribing procedures related thereto;  
providing for codification; and providing an  
effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 901.1 of Title 17, unless there  
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma E-mail  
2 Communication Content Privacy Protection Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 901.2 of Title 17, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in this section:

7 1. "Authorized to do business" means that a business entity is  
8 formed pursuant to the laws of this state or registered with the  
9 Secretary of State, if required to do so, pursuant to the laws  
10 applicable to the business entity or to the type of business that  
11 the entity conducts;

12 2. "Business entity" means a:

- 13 a. sole proprietorship,
- 14 b. general partnership,
- 15 c. limited partnership,
- 16 d. limited liability partnership,
- 17 e. limited liability limited partnership,
- 18 f. corporation,
- 19 g. limited liability company, or
- 20 h. any other form of lawfully recognized business entity;

21 3. "Content" means any part of an email communication,  
22 including a heading or subject line;

23 4. "Email communication" means any electronic message sent or  
24 received by any electronic device, whether the device has an

1 Internet Protocol (IP) address or not, from one person to another  
2 person using the services of an email service provider, and which is  
3 sent or received by a resident;

4 5. "Email service provider" means any person or any lawfully  
5 recognized business entity that offers a service, whether the client  
6 pays for the service or not, which allows the client to send and  
7 receive email communications using computer hardware, computer  
8 software or any combination of hardware and software, regardless of  
9 whether the person or business entity owns such hardware or software  
10 or uses the hardware or software pursuant to a lease, license or any  
11 other contractual arrangement. For purposes of this paragraph and  
12 this act, it is not necessary for a person or business entity to be  
13 primarily engaged in the business of providing email communication  
14 services or to derive the majority of its revenues from such  
15 services if the person or business entity provides email  
16 communication services;

17 6. "Person" means:

- 18 a. an individual,
- 19 b. a business entity,
- 20 c. an estate,
- 21 d. a trust, or
- 22 e. any other lawfully recognized entity.

23 7. "Resident" means:

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1 a. with respect to a natural person, someone who either  
2 lives for at least six (6) months at a physical  
3 address located in the state or who maintains a  
4 physical address within the state and who regularly  
5 returns to such address after an extended absence from  
6 the state, or

7 b. with respect to a business entity, means a business  
8 that is organized pursuant to the laws of this state,  
9 is registered to do business with the Secretary of  
10 State even though the business entity is organized  
11 pursuant to the laws of another jurisdiction, has its  
12 principal place of business in the state, has one or  
13 more computer servers used for the provision of email  
14 communication services in the state or which offers  
15 email communication services to a resident;

16 8. "Scanning" means any process pursuant to which any part of  
17 the content of an email communication is analyzed, summarized,  
18 interpreted or otherwise examined by human action or by the use of  
19 software, analytical programs, algorithms or any other method that  
20 allows a person or business entity, including the email service  
21 provider, to acquire information about the email client which  
22 includes personal information about the client such as their name,  
23 mailing address, phone number or numbers, other email addresses,  
24 financial information or any other information about the email

1 client which can be derived from the scanning of the client's email  
2 communications; and

3 9. "Server" means computer hardware owned, leased or otherwise  
4 utilized by an email service provider to provide email  
5 communications services to clients.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 901.3 of Title 17, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. No email service provider shall conduct any form of scanning  
10 of the subject lines or body of any email communication sent to or  
11 by any of its clients nor shall such email service provider allow  
12 any other person, whether directly or indirectly, to perform a scan  
13 of any such email communications.

14 B. The Oklahoma Corporation Commission shall have exclusive  
15 jurisdiction to investigate any complaint filed by an email service  
16 customer regarding violation of the provisions of subsection A of  
17 this section.

18 C. The Corporation Commission shall conduct an investigation of  
19 the complaint and conclude its inquiry within sixty (60) days from  
20 the date the complaint is filed. The Corporation Commission shall  
21 have the power to examine the books, records, files, computer  
22 hardware, computer software or any other form of property used by an  
23 email service provider against which a complaint has been filed.

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1 D. The Corporation Commission shall, pursuant to its rules of  
2 practice and procedure, allow the email service provider to offer  
3 evidence in the form of testimony, documents, physical evidence or  
4 any other form of proof that would be admissible either under the  
5 Oklahoma Evidence Code or pursuant to the administrative rules of  
6 the Corporation Commission regarding the alleged violation.

7 E. The Corporation Commission may provide a process for  
8 findings of fact and conclusions of law either by an administrative  
9 law judge or pursuant to a hearing en banc before the full  
10 Commission.

11 F. The final order of the Corporation Commission shall be  
12 appealable either by the party filing the complaint or by the email  
13 service provider or both such parties in the same manner and within  
14 the same time period prescribed by law or the rules of appellate  
15 procedure before the Oklahoma Supreme Court in other matters over  
16 which the Corporation Commission has jurisdiction.

17 G. In the event of repetitive violations of the requirements of  
18 subsection A of this section, the Oklahoma Corporation Commission  
19 shall have the power to issue an order enjoining an email service  
20 provider from conducting the prohibited activity for such period of  
21 time as may be prescribed in the order.

22 H. For each violation of the requirements of subsection A of  
23 this section the Corporation Commission shall be authorized to  
24 impose a penalty of not less than Five Hundred Dollars (\$500.00) nor

1 more than Five Thousand Dollars (\$5,000.00). Any event involving  
2 the scanning of an email in violation of the provisions of this  
3 section as finally determined pursuant to an order of the  
4 Corporation Commission shall constitute a separate violation for  
5 purposes of the penalty authorized by this subsection. The penalty  
6 amounts shall be apportioned to the Oklahoma E-Mail Communication  
7 Content Privacy Protection Revolving Fund to be used for the cost of  
8 administering the provisions of this act.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 901.4 of Title 17, unless there  
11 is created a duplication in numbering, reads as follows:

12 There is hereby created in the State Treasury a revolving fund  
13 for the Oklahoma Corporation Commission to be designated the  
14 "Oklahoma E-Mail Communication Content Privacy Protection Revolving  
15 Fund". The fund shall be a continuing fund, not subject to fiscal  
16 year limitations, and shall consist of all monies received by the  
17 Oklahoma Corporation from penalties imposed pursuant to Section 3 of  
18 this act. All monies accruing to the credit of said fund are hereby  
19 appropriated and may be budgeted and expended by the Oklahoma  
20 Corporation Commission for the purpose of administering the Oklahoma  
21 E-Mail Communication Content Privacy Protection Act. Expenditures  
22 from said fund shall be made upon warrants issued by the State  
23 Treasurer against claims filed as prescribed by law with the  
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1 Director of the Office of Management and Enterprise Services for  
2 approval and payment.

3 SECTION 5. This act shall become effective November 1, 2020.

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