
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2292 Session of
2005

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SURRA, TANGRETTI, J. TAYLOR, TIGUE, WHEATLEY, WOJNAROSKI AND
YOUNGBLOOD, DECEMBER 5, 2005

REFERRED TO COMMITTEE ON COMMERCE, DECEMBER 5, 2005

AN ACT

1 Providing for the protection of consumers from phishing and for
2 criminal and civil enforcement.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Antiphishing
7 and Consumer Protection Act.

8 Section 2. Findings and declaration.

9 The General Assembly finds and declares as follows:

10 (1) Commonwealth consumers are increasingly dependent on
11 the Internet for communications, entertainment, commerce and
12 banking.

13 (2) For the Internet to reach its full potential in
14 these and other respects, it must continue to be a
15 trustworthy medium whereby Internet users can trust the

1 stated origin of Internet communications and the stated
2 destination of Internet hyperlinks.

3 (3) Internet users are increasingly subjected to scams
4 based on misleading or false communications that trick the
5 user into sending money or trick the user into revealing
6 enough information to enable various forms of identity theft
7 that result in financial loss.

8 (4) One class of such scams, called "phishing," uses
9 false e-mail return addresses, stolen graphics, stylistic
10 imitation, misleading or disguised hyperlinks and other
11 artifices to trick users into revealing personally
12 identifiable information. After obtaining this information,
13 the phisher then uses the information to create unlawful
14 identification documents and/or to unlawfully obtain money or
15 property.

16 (5) Another such scam, called "pharming", avoids the
17 need for a user to respond to an e-mail message by diverting
18 a computer user's request for a site on the user's favorites
19 list for the user's Internet browser to a falsified site.

20 (6) These crimes victimize not only the individuals
21 whose information is stolen but also the legitimate
22 businesses whose names are used to trick computer users into
23 surrendering personally identifiable information, ISPs who
24 are forced to handle large volumes of phishing e-mails every
25 day and the entire online community, including millions of
26 people who rely on the integrity of the Internet's system of
27 addresses and hyperlinks.

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Covered personal information."

3 (1) Social Security number.

4 (2) Driver's license number or State Identification Card
5 number.

6 (3) A password and identification number or screen name
7 required to access an identified account.

8 "Electronic mail address." A destination, commonly expressed
9 as a string of characters, consisting of a unique user name or
10 mailbox, commonly referred to as the local part, and a reference
11 to an Internet domain, commonly referred to as the domain part,
12 whether or not displayed, to which an electronic mail message
13 can be sent or delivered.

14 "Electronic mail message." A message sent to a unique
15 electronic mail address.

16 "Initiate." To originate or transmit a message or to procure
17 the origination or transmission of such message. The term shall
18 not include actions that constitute routine conveyance of such
19 message. For purposes of this act, more than one person may be
20 considered to have initiated a message.

21 "Internet." The combination of computer facilities and
22 electromagnetic transmission media and related equipment and
23 software, comprising the interconnected worldwide network of
24 computer networks that employ the Transmission Control
25 Protocol/Internet Protocol or any successor protocol to transmit
26 information.

27 "Internet information location tool." A service that refers
28 or links users to an online location. The term includes
29 directories, indices, references, pointers and hypertext links.

30 "Legitimate business." A business that is registered to do

1 business under the laws of any jurisdiction.

2 "Procure." Intentionally pay or provide consideration to or
3 induce another person to create an Internet website or domain
4 name.

5 "Recipient." An authorized user of the electronic mail
6 address to which the message was sent or delivered. If a
7 recipient of a commercial electronic mail message has one or
8 more electronic mail addresses in addition to the address to
9 which the message was sent or delivered, the recipient shall be
10 treated as a separate recipient with respect to each such
11 address. If an electronic mail address is reassigned to a new
12 user, the new user shall not be treated as a recipient of any
13 commercial electronic mail message sent or delivered to that
14 address before it was reassigned.

15 Section 4. Phishing and pharming prohibitions.

16 (a) Unlawful acts.--It shall be unlawful for any person with
17 actual knowledge, with conscious avoidance of actual knowledge
18 or willfully to:

19 (1) make any communication presenting such communication
20 under false pretenses as being made by or on behalf of a
21 legitimate business, without the authority or approval of the
22 legitimate business; and

23 (2) use that communication to induce, request or solicit
24 any person to provide a password or account number issued by
25 the legitimate business or covered personal information.

26 (b) Prohibited electronic mail.--A person or entity shall
27 not, with actual knowledge, with conscious avoidance of actual
28 knowledge or willfully, transmit with the intent to defraud or
29 obtain a thing of value an electronic mail message that:

30 (1) deceptively misrepresents itself as being sent by a

1 legitimate online business;

2 (2) includes an Internet information location tool that
3 refers or links users to an online location that falsely
4 purports to belong to or be associated with such legitimate
5 online business; and

6 (3) induces, requests or solicits a recipient of the
7 electronic mail message directly or indirectly to provide a
8 password or account number issued by the legitimate online
9 business or covered personal information with the intent to
10 defraud or obtain a thing of value.

11 (c) Prohibited software.--A person or entity shall not, with
12 actual knowledge, with conscious avoidance of actual knowledge
13 or willfully, possess, sell or distribute any software program
14 for the purpose of facilitating any violation of subsection (a)
15 or (b).

16 (d) Unlawful use of information.--A person or entity shall
17 not, with actual knowledge, with conscious avoidance of actual
18 knowledge or willfully, possess with intent to use in fraudulent
19 manner, sell or distribute any account number, password or
20 covered personal information obtained in violation of subsection
21 (a) or (b).

22 (e) Conspiracy.--A person or entity shall not conspire with
23 any other person or attempt to engage in any act that violates
24 any provision of this section.

25 Section 5. Good Samaritan protection for disabling phishing and
26 pharming sites.

27 No provider of an interactive computer service may be held
28 liable under any provision of the laws of this Commonwealth or
29 of any political subdivision of this Commonwealth for removing
30 or disabling access to content that resides on an Internet

1 website or other online location controlled or operated by such
2 provider and that such provider believes in good faith is used
3 to engage in a violation of this act.

4 Section 6. Criminal enforcement.

5 (a) District attorneys.--The district attorneys of the
6 several counties shall have authority to investigate and to
7 institute criminal proceedings for any violations of this act.

8 (b) Attorney General.--In addition to the authority
9 conferred upon the Attorney General under the act of October 15,
10 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act,
11 the Attorney General shall have the authority to investigate and
12 institute criminal proceedings for any violation of this act. A
13 person charged with a violation of this act by the Attorney
14 General shall not have standing to challenge the authority of
15 the Attorney General to investigate or prosecute the case, and,
16 if any such challenge is made, the challenge shall be dismissed
17 and no relief shall be available in the courts of this
18 Commonwealth to the person making the challenge.

19 (c) Proceedings against person outside Commonwealth.--In
20 addition to powers conferred upon district attorneys and the
21 Attorney General in subsections (a) and (b), district attorneys
22 and the Attorney General shall have the authority to investigate
23 and initiate criminal proceedings against persons for violations
24 of the act in accordance with 42 Pa.C.S. § 5322 (relating to
25 bases of personal jurisdiction over persons outside this
26 Commonwealth).

27 Section 7. Penalty.

28 Any person that violates any provision of this act commits a
29 felony of the second degree and, upon conviction thereof, shall
30 be sentenced to imprisonment for not less than one nor more than

1 ten years or a fine, notwithstanding 18 Pa.C.S. § 1101 (relating
2 to fines), of not more than \$25,000, or both.

3 Section 8. Civil relief.

4 (a) Civil actions for relief.--Subject to the limitations
5 prescribed in subsection (f), only the following permitted
6 persons may bring a civil action against a person who violates
7 this act.

8 (1) a person engaged in the business of providing
9 Internet access service to the public who is adversely
10 affected by the violation;

11 (2) an owner of a web page or trademark that is used
12 without authorization in the violation; or

13 (3) the Attorney General.

14 (b) Remedies.--A permitted person bringing an action under
15 this section may:

16 (1) seek injunctive relief to restrain the violator from
17 continuing the violation;

18 (2) recover damages in an amount equal to the greater
19 of:

20 (i) actual damages arising from the violation; or

21 (ii) \$100,000 for each violation of the same nature;

22 or

23 (3) both seek injunctive relief and recover damages as
24 provided by this subsection.

25 (c) Treble damages.--The court may increase an award of
26 actual damages in an action brought under this section to an
27 amount not to exceed three times the actual damages sustained if
28 the court finds that the violations have occurred with a
29 frequency as to constitute a pattern or practice.

30 (d) Attorney fees.--A permitted person who prevails in an

1 action filed under this section is entitled to recover
2 reasonable attorney fees and court costs.

3 (e) Construction of section.--For purposes of this section,
4 violations are of the same nature if the violations consist of
5 the same course of conduct or action, regardless of the number
6 of times the conduct or act occurred.

7 (f) Unfair and deceptive trade practice.--A violation of
8 this act shall be deemed to be an unfair or deceptive act or
9 practice in violation of the act of December 17, 1968 (P.L.1224,
10 No.387), known as the Unfair Trade Practices and Consumer
11 Protection Law. The Office of Attorney General shall have
12 exclusive authority to bring an action under the Unfair Trade
13 Practices and Consumer Protection Law for a violation of that
14 act.

15 Section 9. Effective date.

16 This act shall take effect immediately.