

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 32

Session of 2007

INTRODUCED BY MARKOSEK, BELFANTI, BENNINGTON, BOYD, CALTAGIRONE, CARROLL, CASORIO, DeWEESE, FREEMAN, GEIST, GERGELY, GRUCELA, HARHAI, JOSEPHS, KORTZ, MANN, McGEEHAN, MILLARD, MUNDY, MYERS, M. O'BRIEN, O'NEILL, PALLONE, PYLE, READSHAW, SAINATO, STURLA, WHEATLEY, WANSACZ, TANGRETTI, GEORGE, PARKER, YOUNGBLOOD, DALLY, KAUFFMAN, RAYMOND, CIVERA, FAIRCHILD, KIRKLAND, ROSS, THOMAS, FABRIZIO, COSTA, STABACK, CURRY, SURRA, WALKO, SAYLOR, FRANKEL, SWANGER, HORNAMAN, ROHRER, J. WHITE, RAMALEY, PETRARCA, SIPTROTH, MELIO, GALLOWAY AND DENLINGER, JANUARY 30, 2007

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 19, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for the offense of phishing.

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

5 Section 1. Chapter 76 of Title 18 of the Pennsylvania
6 Consolidated Statutes is amended by adding a subchapter to read:

7 SUBCHAPTER F

8 PHISHING

9 Sec.

10 7671. Definitions.

11 7672. Phishing.

12 7673. Protection from liability.

13 7674. Civil relief.

1 § 7671. Definitions.

2 The following words and phrases when used in this subchapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Communication." A message conveyed by oral, written or
6 electronic means, including telephone, electronic mail,
7 Internet, facsimile, telex, wireless communication, WEBPAGE or <—
8 similar transmission.

9 "Identifying information." Any document, photographic,
10 pictorial or computer image of another person, or any fact used
11 to establish identity, including any of the following:

12 (1) Name.

13 (2) Birth date.

14 (3) Social Security number.

15 (4) Driver's license number or nondriver governmental
16 identification number.

17 (5) Telephone number.

18 (6) Checking or savings account number.

19 (7) Student identification number.

20 (8) Employee or payroll number.

21 (9) Electronic signature.

22 "INTERACTIVE COMPUTER SERVICE." AN INFORMATION SERVICE OR <—
23 SYSTEM THAT ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A
24 COMPUTER SERVER, INCLUDING SPECIFICALLY A SERVICE OR SYSTEM THAT
25 PROVIDES ACCESS TO THE INTERNET OR TO SOFTWARE SERVICES
26 AVAILABLE ON A SERVER, AND SUCH SYSTEMS OPERATED OR SERVICES
27 OFFERED BY A LIBRARY OR EDUCATIONAL INSTITUTION.

28 "Legitimate business." A business that is registered to do
29 business under the law of any jurisdiction.

30 "Web page." A location, with respect to the World Wide Web,

1 that has a single uniform resource locator or other single
2 location with respect to the Internet.

3 § 7672. Phishing.

4 (a) Offense of phishing.--An actor commits the offense of
5 phishing under the following circumstances if the actor, with
6 the intent to defraud or injure anyone or with the knowledge
7 that a fraud is being facilitated or that an injury is being
8 perpetrated by anyone:

9 (1) ~~the actor~~ makes a communication under false <—
10 pretenses by or on behalf of a legitimate business, without
11 the authority or approval of the business;

12 (2) ~~the actor~~ uses the communication to induce, request <—
13 or solicit a person to provide identifying information; and

14 (3) the person provides the identifying information to
15 the actor or an accomplice of the actor.

16 (b) Additional violations.--It shall also be a violation of
17 this section for a person to sell or distribute any identifying
18 information obtained in violation of subsection (a) with the
19 intent to defraud or injure anyone or with the knowledge that a
20 fraud is being facilitated or that an injury is being
21 perpetrated by anyone.

22 (c) Venue.--An offense committed under this section may be
23 deemed to have been committed at any of the following locations:

24 (1) The place where a person possessed, obtained or used
25 the identifying information of another person under false
26 pretenses.

27 (2) The residence of the person whose identifying
28 information has been ~~stolen~~ OBTAINED or used under false <—
29 pretenses.

30 (3) The business or employment address of the person

<—

1 whose identifying information has been ~~stolen~~ OBTAINED or
2 used under false pretenses, if the identifying information at
3 issue is associated with the person's business or employment.

4 (d) Grading.--A violation of subsection (a) shall be graded
5 as a felony of the third degree. A violation of subsection (b)
6 shall be graded as a felony of the second degree.

7 (e) Concurrent jurisdiction to prosecute.--In addition to
8 the authority conferred upon the Attorney General by the act of
9 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
10 Attorneys Act, the Attorney General shall have the authority to
11 investigate and to institute criminal proceedings for any
12 violation of this section or any series of violations involving
13 more than one county of this Commonwealth or another state. No
14 person charged with a violation of this section by the Attorney
15 General shall have standing to challenge the authority of the
16 Attorney General to investigate or prosecute the case, and if
17 the challenge is made, the challenge shall be dismissed and no
18 relief shall be made available in the courts of this
19 Commonwealth to the person making this challenge.

20 § 7673. Protection from liability.

21 No ~~Internet~~ INTERACTIVE COMPUTER service provider may be held <—
22 liable under any provision of the laws of this Commonwealth or
23 of one of its political subdivisions for removing or disabling
24 access to content that resides on an Internet website or other
25 online location controlled or operated by the provider which the
26 provider believes in good faith is used to engage in a violation
27 of this subchapter.

28 § 7674. Civil relief.

29 ~~(a) Civil actions for relief. Any of the following persons~~ <—
30 ~~may bring a civil action against a person who violates this~~

1 ~~subchapter.~~

2 ~~(1) An Internet service provider who is adversely~~
3 ~~affected by the violation.~~

4 ~~(2) An owner of a web page or a trademark that is used~~
5 ~~without authorization in the violation.~~

6 (A) CIVIL ACTION.--AN INTERACTIVE COMPUTER SERVICE PROVIDER <—
7 AND A BUSINESS SHALL EACH HAVE A CIVIL CAUSE OF ACTION AGAINST
8 ANY PERSON WHO UTILIZES THE INTERACTIVE COMPUTER SERVICE TO MAKE
9 A COMMUNICATION UNDER FALSE PRETENSES BY OR ON BEHALF OF THE
10 BUSINESS, WITHOUT THE AUTHORITY OF THE BUSINESS, FOR THE PURPOSE
11 OF INDUCING, REQUESTING OR SOLICITING A PERSON TO PROVIDE
12 IDENTIFYING INFORMATION.

13 (b) Civil remedies.--A person permitted to bring a civil
14 action under this section may do any of the following:

15 (1) Seek injunctive relief to restrain the violator from
16 continuing the violation.

17 (2) Recover damages in an amount equal to the greater of
18 the following:

19 (i) Actual damages arising from the violation.

20 (ii) ~~Not~~ STATUTORY DAMAGES, AS DETERMINED BY THE <—
21 COURT, OF NOT more than \$100,000 for each violation of
22 the same nature.

23 (3) Obtain both injunctive relief and damages as
24 provided in 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 person who prevails in an action filed

1 under this section shall be entitled to recover reasonable
2 attorneys fees and court costs.

3 (E) VENUE.--AN ACTION UNDER THIS SECTION MAY BE BROUGHT: <—

4 (1) AT THE RESIDENCE OR PRINCIPAL PLACE OF BUSINESS OF A
5 PERSON WHO RECEIVES A COMMUNICATION.

6 (2) THE PRINCIPAL PLACE OF BUSINESS OF THE INTERACTIVE
7 COMPUTER SERVICE.

8 (3) SUCH OTHER LOCATION AS PROVIDED FOR BY THE
9 PENNSYLVANIA RULES OF CIVIL PROCEDURE.

10 Section 2. This act shall take effect in 60 days.