

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 390 Session of 2007

INTRODUCED BY CORMAN, WONDERLING, RAFFERTY, GORDNER, BROWNE, COSTA, TARTAGLIONE, WOZNIAK, ORIE, O'PAKE, REGOLA, WAUGH, STACK, ROBBINS, KASUNIC, C. WILLIAMS, TOMLINSON, BAKER, FERLO, BRUBAKER, FONTANA, RHOADES, LAVALLE, PIPPY, LOGAN, PUNT AND STOUT, MARCH 13, 2007

SENATOR WONDERLING, COMMUNICATIONS AND TECHNOLOGY, AS AMENDED, OCTOBER 24, 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. Good Samaritan protection. <—

13 7673. PROTECTION FROM LIABILITY. <—

14 7674. Civil relief.

15 § 7671. Definitions. <—

16 The following words and phrases when used in this subchapter

1 ~~shall have the meanings given to them in this section unless the~~
2 ~~context clearly indicates otherwise:~~

3 ~~"Communication."—A message conveyed by oral, written or~~
4 ~~electronic means, including telephone, electronic mail,~~
5 ~~Internet, facsimile, telex, wireless communication or similar~~
6 ~~transmission.~~

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

10 ~~(1) Name.~~

11 ~~(2) Birth date.~~

12 ~~(3) Social Security number.~~

13 ~~(4) Driver's license number or nondriver governmental~~
14 ~~identification number.~~

15 ~~(5) Telephone number.~~

16 ~~(6) Checking or savings account number.~~

17 ~~(7) Student identification number.~~

18 ~~(8) Employee or payroll number.~~

19 ~~(9) Electronic signature.~~

20 ~~"Legitimate business."—A business that is registered to do~~
21 ~~business under the law of any jurisdiction.~~

22 ~~"Web page."—A location, with respect to the Internet, that~~
23 ~~has a single uniform resource locator or other single location.~~

24 ~~§ 7672. Phishing.~~

25 ~~(a) Offense of phishing.—An actor commits the offense of~~
26 ~~phishing under the following circumstances, with the intent to~~
27 ~~defraud or injure anyone or with the knowledge that a fraud is~~
28 ~~being facilitated or that an injury is being perpetrated by~~
29 ~~anyone:~~

30 ~~(1) the actor makes a communication under false~~

~~pretenses by or on behalf of a legitimate business without the authority or approval of the business;~~

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

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

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

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

~~(1) The place where a person possessed or used the identifying information of another person under false pretenses.~~

~~(2) The residence of the person whose identifying information has been lost, stolen or used under false pretenses.~~

~~(3) The business or employment address of the person whose identifying information has been lost or stolen or has been used under false pretenses if the identifying information at issue is associated with the person's business or employment.~~

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

~~(e) Concurrent jurisdiction to prosecute. In addition to the authority conferred upon the Attorney General by the act of~~

1 ~~October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth~~
2 ~~Attorneys Act, the Attorney General shall have the authority to~~
3 ~~investigate and to institute criminal proceedings for any~~
4 ~~violation of this section or any series of violations involving~~
5 ~~more than one county of this Commonwealth or another state. No~~
6 ~~person charged with a violation of this section by the Attorney~~
7 ~~General shall have standing to challenge the authority of the~~
8 ~~Attorney General to investigate or prosecute the case, and, if~~
9 ~~the challenge is made, the challenge shall be dismissed and no~~
10 ~~relief shall be made available in the courts of this~~
11 ~~Commonwealth to the person making this challenge.~~

12 ~~§ 7673. Good Samaritan protection.~~

13 ~~No Internet service provider may be held liable under any~~
14 ~~provision of the laws of this Commonwealth or of one of its~~
15 ~~political subdivisions for removing or disabling access to~~
16 ~~content that resides on an Internet website or other online~~
17 ~~location controlled or operated by the provider which the~~
18 ~~provider believes in good faith is used to engage in a violation~~
19 ~~of this subchapter.~~

20 ~~§ 7674. Civil relief.~~

21 ~~(a) Civil actions for relief. Any of the following persons~~
22 ~~may bring a civil action against a person who violates this~~
23 ~~subchapter.~~

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

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

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

30 ~~(1) Seek injunctive relief to restrain the violator from~~

1 ~~continuing the violation.~~

2 ~~(2) Recover damages in an amount equal to the greater of~~
3 ~~the following:~~

4 ~~(i) Actual damages arising from the violation.~~

5 ~~(ii) One hundred thousand dollars for each violation~~
6 ~~of the same nature.~~

7 ~~(3) Obtain both injunctive relief and damages as~~
8 ~~provided in this subsection.~~

9 ~~(c) Treble damages. The court may increase an award of~~
10 ~~actual damages in an action brought under this section to an~~
11 ~~amount not to exceed three times the actual damages sustained if~~
12 ~~the court finds that the violations have occurred with a~~
13 ~~frequency as to constitute a pattern or practice.~~

14 ~~(d) Attorney fees. A person who prevails in an action filed~~
15 ~~under this section shall be entitled to recover reasonable~~
16 ~~attorneys fees and court costs.~~

17 § 7671. DEFINITIONS.

18 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
19 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
20 CONTEXT CLEARLY INDICATES OTHERWISE:

21 "COMMUNICATION." A MESSAGE CONVEYED BY ORAL, WRITTEN OR
22 ELECTRONIC MEANS, INCLUDING TELEPHONE, ELECTRONIC MAIL,
23 INTERNET, FACSIMILE, TELEX, WIRELESS COMMUNICATION, WEB PAGE OR
24 SIMILAR TRANSMISSION.

25 "IDENTIFYING INFORMATION." ANY DOCUMENT, PHOTOGRAPHIC,
26 PICTORIAL OR COMPUTER IMAGE OF ANOTHER PERSON, OR ANY FACT USED
27 TO ESTABLISH IDENTITY, INCLUDING ANY OF THE FOLLOWING:

28 (1) NAME.

29 (2) BIRTH DATE.

30 (3) SOCIAL SECURITY NUMBER.

1 (4) DRIVER'S LICENSE NUMBER OR NONDRIVER GOVERNMENTAL
2 IDENTIFICATION NUMBER.

3 (5) TELEPHONE NUMBER.

4 (6) CHECKING OR SAVINGS ACCOUNT NUMBER.

5 (7) STUDENT IDENTIFICATION NUMBER.

6 (8) EMPLOYEE OR PAYROLL NUMBER.

7 (9) ELECTRONIC SIGNATURE.

8 "INTERACTIVE COMPUTER SERVICE." AN INFORMATION SERVICE OR
9 SYSTEM THAT ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A
10 COMPUTER SERVER, INCLUDING SPECIFICALLY A SERVICE OR SYSTEM THAT
11 PROVIDES ACCESS TO THE INTERNET OR TO SOFTWARE SERVICES
12 AVAILABLE ON A SERVER, AND SUCH SYSTEMS OPERATED OR SERVICES
13 OFFERED BY A LIBRARY OR EDUCATIONAL INSTITUTION.

14 "LEGITIMATE BUSINESS." A BUSINESS THAT IS REGISTERED TO DO
15 BUSINESS UNDER THE LAW OF ANY JURISDICTION.

16 "WEB PAGE." A LOCATION, WITH RESPECT TO THE INTERNET
17 WEBSITE, THAT HAS A SINGLE UNIFORM RESOURCE LOCATOR OR OTHER
18 SINGLE LOCATION WITH RESPECT TO THE INTERNET.

19 § 7672. PHISHING.

20 (A) OFFENSE OF PHISHING.--AN ACTOR COMMITS THE OFFENSE OF
21 PHISHING UNDER THE FOLLOWING CIRCUMSTANCES IF THE ACTOR, WITH
22 THE INTENT TO DEFRAUD OR INJURE ANYONE OR WITH THE KNOWLEDGE
23 THAT A FRAUD IS BEING FACILITATED OR THAT AN INJURY IS BEING
24 PERPETRATED BY ANYONE:

25 (1) (I) MAKES A COMMUNICATION REQUESTING OR SOLICITING
26 A PERSON TO PROVIDE IDENTIFYING INFORMATION UNDER FALSE
27 PRETENSES BY OR ON BEHALF OF A LEGITIMATE BUSINESS,
28 WITHOUT THE AUTHORITY OR APPROVAL OF THE BUSINESS; AND

29 (II) THE PERSON PROVIDES THE IDENTIFYING
30 INFORMATION; OR

1 (2) SELLS OR DISTRIBUTES ANY IDENTIFYING INFORMATION
2 OBTAINED IN VIOLATION OF PARAGRAPH (1).

3 (B) VENUE.--AN OFFENSE COMMITTED UNDER THIS SECTION MAY BE
4 DEEMED TO HAVE BEEN COMMITTED AT ANY OF THE FOLLOWING LOCATIONS:

5 (1) THE PLACE WHERE A PERSON POSSESSED, OBTAINED OR USED
6 THE IDENTIFYING INFORMATION OF ANOTHER PERSON UNDER FALSE
7 PRETENSES.

8 (2) THE RESIDENCE OF THE PERSON WHOSE IDENTIFYING
9 INFORMATION HAS BEEN OBTAINED OR USED UNDER FALSE PRETENSES.

10 (3) THE BUSINESS OR EMPLOYMENT ADDRESS OF THE PERSON
11 WHOSE IDENTIFYING INFORMATION HAS BEEN OBTAINED OR USED UNDER
12 FALSE PRETENSES, IF THE IDENTIFYING INFORMATION AT ISSUE IS
13 ASSOCIATED WITH THE PERSON'S BUSINESS OR EMPLOYMENT.

14 (C) GRADING.--A VIOLATION OF SUBSECTION (A)(1) SHALL BE
15 GRADED AS A FELONY OF THE THIRD DEGREE. A VIOLATION OF
16 SUBSECTION (A)(2) SHALL BE GRADED AS A FELONY OF THE SECOND
17 DEGREE.

18 (D) CONCURRENT JURISDICTION TO PROSECUTE.--IN ADDITION TO
19 THE AUTHORITY CONFERRED UPON THE ATTORNEY GENERAL BY THE ACT OF
20 OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH
21 ATTORNEYS ACT, THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO
22 INVESTIGATE AND TO INSTITUTE CRIMINAL PROCEEDINGS FOR ANY
23 VIOLATION OF THIS SECTION OR ANY SERIES OF VIOLATIONS INVOLVING
24 MORE THAN ONE COUNTY OF THIS COMMONWEALTH OR ANOTHER STATE. NO
25 PERSON CHARGED WITH A VIOLATION OF THIS SECTION BY THE ATTORNEY
26 GENERAL SHALL HAVE STANDING TO CHALLENGE THE AUTHORITY OF THE
27 ATTORNEY GENERAL TO INVESTIGATE OR PROSECUTE THE CASE, AND IF
28 THE CHALLENGE IS MADE, THE CHALLENGE SHALL BE DISMISSED AND NO
29 RELIEF SHALL BE MADE AVAILABLE IN THE COURTS OF THIS
30 COMMONWEALTH TO THE PERSON MAKING THIS CHALLENGE.

1 § 7673. PROTECTION FROM LIABILITY.

2 NO INTERACTIVE COMPUTER SERVICE PROVIDER MAY BE HELD LIABLE
3 UNDER ANY PROVISION OF THE LAWS OF THIS COMMONWEALTH OR OF ONE
4 OF ITS POLITICAL SUBDIVISIONS FOR REMOVING OR DISABLING ACCESS
5 TO CONTENT THAT RESIDES ON AN INTERNET WEBSITE OR OTHER ONLINE
6 LOCATION CONTROLLED OR OPERATED BY THE PROVIDER WHICH THE
7 PROVIDER BELIEVES IN GOOD FAITH IS USED TO ENGAGE IN A VIOLATION
8 OF THIS SUBCHAPTER.

9 § 7674. CIVIL RELIEF.

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

17 (B) CIVIL REMEDIES.--A PERSON PERMITTED TO BRING A CIVIL
18 ACTION UNDER THIS SECTION MAY DO ANY OF THE FOLLOWING:

19 (1) SEEK INJUNCTIVE RELIEF TO RESTRAIN THE VIOLATOR FROM
20 CONTINUING THE VIOLATION.

21 (2) RECOVER DAMAGES IN AN AMOUNT EQUAL TO THE GREATER OF
22 THE FOLLOWING:

23 (I) ACTUAL DAMAGES ARISING FROM THE VIOLATION.

24 (II) STATUTORY DAMAGES, AS DETERMINED BY THE COURT,
25 OF NOT MORE THAN \$100,000 FOR EACH VIOLATION OF THE SAME
26 NATURE.

27 (3) OBTAIN BOTH INJUNCTIVE RELIEF AND DAMAGES AS
28 PROVIDED IN THIS SUBSECTION.

29 (C) TREBLE DAMAGES.--THE COURT MAY INCREASE AN AWARD OF
30 ACTUAL DAMAGES IN AN ACTION BROUGHT UNDER THIS SECTION TO AN

1 AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES SUSTAINED IF
2 THE COURT FINDS THAT THE VIOLATIONS HAVE OCCURRED WITH A
3 FREQUENCY AS TO CONSTITUTE A PATTERN OR PRACTICE.

4 (D) ATTORNEY FEES.--A PERSON WHO PREVAILS IN AN ACTION FILED
5 UNDER THIS SECTION SHALL BE ENTITLED TO RECOVER REASONABLE
6 ATTORNEYS FEES AND COURT COSTS.

7 (E) VENUE.--AN ACTION UNDER THIS SECTION MAY BE BROUGHT:

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

10 (2) THE PRINCIPAL PLACE OF BUSINESS OF THE INTERACTIVE
11 COMPUTER SERVICE.

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

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