

Senate Bill 62

By: Senators Shafer of the 48th and Staton of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To provide for a short title; to provide for legislative findings; to amend Article 6 of Chapter
2 9 of Title 16 of the Official Code of Georgia Annotated, relating to computer systems
3 protections, so as to add a new part to create the new crime of initiation of deceptive
4 commercial e-mail; to provide for definitions; to provide for criminal penalties; to provide
5 for civil relief and venue for civil proceedings; to provide for certain prosecuting officials to
6 prosecute deceptive commercial e-mail; to provide for applicability; to provide for
7 exceptions; to change provisions relating to the definition of racketeering activity in the
8 Georgia RICO Act; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Georgia Slam Spam E-mail Act."

13 **SECTION 2.**

14 The General Assembly finds and declares that electronic mail has become an important and
15 popular means of communication, relied on by millions of Georgians on a daily basis for
16 personal and commercial purposes. The low cost and global reach of electronic mail make
17 it convenient and efficient. Electronic mail serves as a catalyst for economic development
18 and frictionless commerce. The General Assembly further finds that the convenience and
19 efficiency of electronic mail is threatened by an ever-increasing glut of deceptive commercial
20 electronic mail. The senders of these electronic messages engage in a variety of fraudulent
21 and deceptive practices to hide their identities, to disguise the true source of their electronic
22 mail, and to evade the criminal and civil consequences of their actions. Deceptive
23 commercial electronic mail imposes costs upon its ultimate recipients who are forced to
24 receive, review, and delete unwanted messages and upon the electronic mail service
25 providers forced to carry the messages. The General Assembly further finds that our state has

1 a paramount interest in protecting its businesses and citizens from the deleterious effects of
 2 deceptive commercial electronic mail, including the impermissible shifting of cost and
 3 economic burden that results from the false and fraudulent nature of deceptive commercial
 4 electronic mail. Georgia's enforcement of this interest imposes no additional burden upon
 5 the senders of such electronic mails in relation to the laws of any other state, in that such
 6 enforcement requires nothing more than the senders' forbearance from active deception.

7 **SECTION 3.**

8 Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
 9 computer systems protection, is amended by striking paragraph (1) of Code Section 16-9-92,
 10 definitions in the "Georgia Computer Systems Protection Act," and inserting in lieu thereof
 11 the following:

12 "(1) 'Computer' means an electronic, magnetic, optical, ~~electrochemical, or other~~
 13 ~~high-speed data processing device or system performing computer operations with or on~~
 14 ~~data and includes any data storage facility or communications facility directly related to~~
 15 ~~or operating in conjunction with such device; but such term does not include an~~
 16 ~~automated typewriter or typesetter, portable hand-held calculator, household appliance,~~
 17 ~~or other similar device that is not used to communicate with or to manipulate any other~~
 18 ~~computer~~ hydraulic, electrochemical, or organic device or group of devices which,
 19 pursuant to a computer program, to human instruction, or to permanent instructions
 20 contained in the device or group of devices, can automatically perform computer
 21 operations with or on computer data and can communicate the results to another
 22 computer or to a person. The term includes any connected or directly related device,
 23 equipment, or facility which enables the computer to store, retrieve, or communicate
 24 computer programs, computer data, or the results of computer operations to or from a
 25 person, another computer, or another device. This term specifically includes, but is not
 26 limited to, mail servers and e-mail networks. This term does not include a device that is
 27 not used to communicate with or to manipulate any other computer."

28 **SECTION 4.**

29 Said article is further amended by designating the existing matter thereof as Part 1 and by
 30 adding a new part to the end of the article to read as follows:

31

32 "Part 2

33 16-9-100.

34 As used in this part, the term:

- 1 (1) 'Advertiser' means a person or entity that advertises through the use of commercial
2 e-mail.
- 3 (2) 'Commercial e-mail' means any e-mail message initiated for the purpose of
4 advertising or promoting the lease, sale, rental, gift, offer, or other disposition of any
5 property, services, or extension of credit.
- 6 (3) 'Direct consent' means that the recipient has expressly consented to receive e-mail
7 advertisements from the advertiser or initiator, either in response to a clear and
8 conspicuous request for direct consent or at the recipient's own initiative.
- 9 (4) 'Domain' means any alphanumeric designation which is registered with or assigned
10 by any domain name registrar, domain name registry, or other domain name registration
11 authority as part of an electronic address on the Internet.
- 12 (5) 'Domain owner' means, in relation to an e-mail address, the actual owner at the time
13 an e-mail is received at that address of a domain that appears in or comprises a portion
14 of the e-mail address. The registrant of a domain is presumed to be the actual owner of
15 that domain.
- 16 (6) 'E-mail' means an electronic message that is sent to an e-mail address and transmitted
17 between two or more telecommunications devices, computers, or electronic devices
18 capable of receiving electronic messages, whether or not the message is converted to hard
19 copy format after receipt, viewed upon transmission, or stored for later retrieval. The term
20 includes electronic messages that are transmitted through a local, regional, or global
21 computer network.
- 22 (7) 'E-mail address' means a destination, commonly expressed as a string of characters,
23 to which e-mail can be sent or delivered. An e-mail address consists of a user name or
24 mailbox, the '@' symbol, and reference to a domain.
- 25 (8) 'E-mail service provider' means any person, including an Internet service provider,
26 that is an intermediary in sending or receiving e-mail or that provides to end-users of the
27 e-mail service the ability to send or receive e-mail.
- 28 (9) 'False or misleading,' when used in relation to a commercial e-mail, means that:
- 29 (A) The header information includes an originating or intermediate e-mail address,
30 domain name, or Internet protocol address which was obtained by means of false or
31 fraudulent pretenses or representations;
- 32 (B) The header information fails to accurately identify the computer used to initiate the
33 e-mail;
- 34 (C) The subject line of the e-mail is likely to mislead a recipient about a material fact
35 regarding the content or subject matter of the e-mail;

1 (D) The header information is altered or modified in a manner that impedes or
2 precludes the recipient of the e-mail or an e-mail service provider from identifying,
3 locating, or contacting the person who initiated the e-mail;

4 (E) The header information or content of the commercial e-mail, without authorization
5 and with intent to mislead, references a personal name, entity name, trade name, mark,
6 domain, address, phone number, or other personally identifying information belonging
7 to a third party in such manner as would cause a recipient to believe that the third party
8 authorized, endorsed, sponsored, sent, or was otherwise involved in the transmission
9 of the commercial e-mail;

10 (F) The header information or content of the commercial e-mail contains false or
11 fraudulent information regarding the identity, location, or means of contacting the
12 initiator of the commercial e-mail; or

13 (G) The commercial e-mail falsely or erroneously states or represents that the
14 transmission of the e-mail was authorized on the basis of:

15 (i) The recipient's prior direct consent to receive the commercial e-mail; or

16 (ii) A preexisting or current business relationship between the recipient and either the
17 initiator or advertiser.

18 (10) 'Header information' means those portions of an e-mail message which designate
19 or otherwise identify:

20 (A) The sender;

21 (B) All recipients;

22 (C) An alternative return e-mail address, if any; and

23 (D) The names or Internet protocol addresses of the computers, systems, or other
24 means used to send, transmit, route, or receive the e-mail message.

25 The term does not include either the subject line or the content of an e-mail message.

26 (11) 'Incident' means the contemporaneous initiation in violation of this part of one or
27 more commercial e-mails containing substantially similar content.

28 (12) 'Initiate' or 'initiator' means to transmit or cause to be transmitted a commercial
29 e-mail, but does not include the routine transmission of an advertisement through the
30 network or system of a telecommunications utility or an e-mail service provider.

31 (13) 'Internet protocol address' means the unique numerical address assigned to and used
32 to identify a specific computer or computer network that is directly connected to the
33 Internet.

34 (14) 'Minor' means any person under the age of 18 years.

35 (15) 'Person' means a person as defined by Code Section 16-1-3 and specifically includes
36 any limited liability company, trust, joint venture, or other legally cognizable entity.

1 (16) 'Preexisting or current business relationship,' as used in connection with the sending
2 of a commercial e-mail, means that the recipient has made an inquiry and has provided
3 his or her e-mail address, or has made an application, purchase, or transaction, with or
4 without consideration, regarding products or services offered by the advertiser.

5 (17) 'Protected computer' means any computer that, at the time of an alleged violation
6 of any provision of this part involving that computer, was located within the geographic
7 boundaries of the State of Georgia.

8 (18) 'Recipient' means any addressee of a commercial e-mail advertisement. If an
9 addressee of a commercial e-mail has one or more e-mail addresses to which a
10 commercial e-mail is sent, the addressee shall be deemed to be a separate recipient for
11 each e-mail address to which the e-mail is sent.

12 (19) 'Routine transmission' means the forwarding, routing, relaying, handling, or storing
13 of an e-mail message through an automatic technical process. The term shall not include
14 the sending, or the knowing participation in the sending, of commercial e-mail
15 advertisements.

16 16-9-101.

17 Any person who initiates a commercial e-mail that the person knew or should have known
18 to be false or misleading that is sent from, passes through, or is received by a protected
19 computer shall be guilty of the crime of initiation of deceptive commercial e-mail.

20 16-9-102.

21 (a) Any person convicted of a violation of Code Section 16-9-101 shall be guilty of a
22 misdemeanor and punished by a fine of not more than \$1,000.00 or by imprisonment of not
23 more than 12 months, or both, except:

24 (1) Where the volume of commercial e-mail transmitted exceeded 10,000 attempted
25 recipients in any 24 hour period;

26 (2) Where the volume of commercial e-mail transmitted exceeded 100,000 attempted
27 recipients in any 30 day period;

28 (3) Where the volume of commercial e-mail transmitted exceeded one million attempted
29 recipients in any one-year period;

30 (4) Where the revenue generated from a specific commercial e-mail exceeded \$1,000.00;

31 (5) Where the total revenue generated from all commercial e-mail transmitted to any
32 e-mail service provider or its subscribers exceeded \$50,000.00; or

33 (6) Where any person knowingly hires, employs, uses, or permits any minor to assist in
34 the transmission of commercial e-mail in violation of Code Section 16-9-101,

1 the person shall be guilty of a felony and punished by a fine of not more than \$50,000.00
2 or by imprisonment of not more than five years, or both.

3 (b) For the second conviction of Code Section 16-9-101 within a five-year period, as
4 measured from the dates of previous arrests for which convictions were obtained to the date
5 of the current arrest for which a conviction is obtained, the person shall be guilty of a
6 felony and punished by a fine of not more than \$50,000.00 or by imprisonment of not more
7 than five years, or both. For the purpose of this subsection, the term 'conviction' shall
8 include a plea of nolo contendere.

9 16-9-103.

10 For the purpose of venue under this part, any violation of this part shall be considered to
11 have been committed:

12 (1) In the county of the principal place of business in this state of the owner of an
13 involved protected computer, computer network, or any part thereof;

14 (2) In any county in which any person alleged to have violated any provision of this part
15 had control or possession of any proceeds of the violation or of any books, records,
16 documents, or property which were used in furtherance of the violation;

17 (3) In any county in which any act was performed in furtherance of any transaction
18 which violated this part; and

19 (4) In any county from which, to which, or through which any use of an involved
20 protected computer or computer network was made, whether by wires, electromagnetic
21 waves, microwaves, or any other means of communication.

22 16-9-104.

23 The Attorney General shall have concurrent jurisdiction with the district attorneys and
24 solicitors-general to conduct the criminal prosecution of violations of this part.

25 16-9-105.

26 (a) The following persons shall have standing to assert a civil action under this part:

27 (1) Any e-mail service provider whose protected computer was used to send, receive, or
28 transmit an e-mail that was sent in violation of this part; and

29 (2) A domain owner of any e-mail address to which a deceptive commercial e-mail is
30 sent in violation of this part, provided that the domain owner also owns a protected
31 computer at which the e-mail was received.

32 (b) Any person who suffers personal, property, or economic damage by reason of a
33 violation of any provision of this part may initiate a civil action for and recover the greater
34 of:

- 1 (1) Five thousand dollars plus expenses of litigation and reasonable attorney's fees;
2 (2) Liquidated damages of \$1,000.00 for each offending commercial e-mail, up to a limit
3 of \$2 million per incident, plus expenses of litigation and reasonable attorney's fees; or
4 (3) Actual damages, plus expenses of litigation and reasonable attorney's fees.

5 16-9-106.

6 (a) Any crime committed in violation of this part shall be considered a separate offense.

7 (b) The provisions of this part shall not be construed as limiting or precluding the
8 application of any other provision of law which applies to any transaction or course of
9 conduct which violates this part.

10 (c) Nothing in this part shall be construed to limit or restrict the adoption, implementation,
11 or enforcement by an e-mail service provider or Internet service provider of a policy of
12 declining to transmit, receive, route, relay, handle, or store certain types of e-mail.

13 16-9-107.

14 There shall be no cause of action under this part against an e-mail service provider on the
15 basis of its routine transmission of any commercial e-mail over its computer network."

16 **SECTION 5.**

17 Said title is further amended in Code Section 16-14-3, relating to definitions relative to the
18 "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," by striking the word
19 "or" at the end of division (9)(A)(xxxvii), by striking the symbol "." at the end of division
20 (9)(A)(xxxviii) and inserting in lieu thereof the symbol and word "; or", and by adding a new
21 division (9)(A)(xxxix) to read as follows:

22 "(xxxix) Code Section 16-9-101, relating to deceptive commercial e-mail."

23 **SECTION 6.**

24 All laws and parts of laws in conflict with this Act are repealed.