

The House Committee on Judiciary Non-civil offers the following substitute to SB 394:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
2 relating to computer systems security, so as to prohibit persons from using the Internet or
3 electronic mail to induce another to provide identifying information by falsely representing
4 themselves to be a business without the authority or approval of the business; to provide
5 definitions; to provide for penalties and sanctions; to provide for civil actions; to provide for
6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
10 computer systems security, is amended by adding a new Part 4 to read as follows:

11 "Part 4

12 16-9-109.1.

13 (a) As used in this part, the term:

14 (1) 'Electronic mail message' means a message sent to a unique destination, commonly
15 expressed as a string of characters, consisting of a unique user name or mailbox,
16 commonly referred to as the 'local part,' and a reference to an Internet domain, commonly
17 referred to as the 'domain part', whether or not displayed, to which an electronic message
18 can be sent or delivered.

19 (2) 'Identifying information' means, with respect to an individual, any of the following:

20 (A) Social security number;

21 (B) Driver's license number;

22 (C) Bank account number;

23 (D) Credit card or debit card number;

24 (E) Personal identification number or PIN;

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1 (F) Automated or electronic signature;

2 (G) Unique biometric data;

3 (H) Account password; or

4 (I) Any other piece of information that can be used to access an individual's financial
5 accounts or to obtain goods or services.

6 (3) 'Internet' shall have the meaning as defined in paragraph (10) of Code Section
7 16-9-151.

8 (4) 'Web page' means a location that has a single uniform resource locator or other single
9 location with respect to the Internet.

10 (b) It shall be unlawful for any person, by means of a Web page, electronic mail message,
11 or otherwise through use of the Internet, to solicit, request, or take any action to induce
12 another person to provide identifying information by representing himself, herself, or itself
13 to be a business without the authority or approval of such business.

14 (c) Any person who violates subsection (b) of this Code section shall be guilty of a felony
15 and, upon conviction thereof, shall be sentenced to serve not less than one nor more than
16 20 years in prison or to pay a fine of not less than \$1,000.00 nor more than \$500,000.00,
17 or both.

18 (d) The following persons may bring an action against a person who violates or is in
19 violation of subsection (b) of this Code section:

20 (1) Any person who is engaged in the business of providing Internet access service to the
21 public, owns a Web page, or owns a trademark; and is adversely affected by a violation
22 of subsection (b) of this Code section. An action brought under this paragraph may seek
23 to recover the greater of actual damages or \$500,000.00; or

24 (2) An individual who is adversely affected by a violation of subsection (b) of this Code
25 section, but only against a person who has directly violated subsection (b) of this Code
26 section. An action brought under this paragraph may seek to enjoin further violations of
27 subsection (b) of this Code section and to recover the greater of three times the amount
28 of actual damages or \$5,000.00 for each violation.

29 (e) The Attorney General or a district attorney may bring an action against a person who
30 violates or is in violation of subsection (b) of this Code section to enjoin further violations
31 of subsection (b) of this Code section and to recover a civil penalty not to exceed \$2,500.00
32 for each violation.

33 (f) In a civil action pursuant to subsection (d) of this Code section, a court may, in addition
34 to the remedies provided in such subsection, increase the recoverable damages to an
35 amount up to three times the damages otherwise recoverable under subsection (d) of this
36 Code section in cases in which the defendant has engaged in a pattern and practice of

1 violating subsection (b) of this Code section or award costs of the action and reasonable
2 attorney's fees to a prevailing plaintiff, or both.

3 (g) The remedies provided in this Code section do not preclude the seeking of any other
4 remedies, including criminal remedies, under any other applicable provision of law.

5 (h) For purposes of paragraph (1) of subsection (d) of this Code section, multiple
6 violations of subsection (b) of this Code section resulting from any single action or conduct
7 shall constitute one violation.

8 (i)(1) For the purposes of this subsection, the term 'employer' includes a business entity's
9 officers, directors, parent corporation, subsidiaries, affiliates, and other corporate entities
10 under common ownership or control within a business enterprise. No employer may be
11 held criminally or civilly liable under this Code section as a result of any actions taken:

12 (A) With respect to computer equipment used by its employees, contractors,
13 subcontractors, agents, leased employees, or other staff which the employer owns,
14 leases, or otherwise makes available or allows to be connected to the employer's
15 network or other computer facilities; or

16 (B) By employees, contractors, subcontractors, agents, leased employees, or other staff
17 who misuse an employer's computer equipment for an illegal purpose without the
18 employer's knowledge, consent, or approval.

19 (2) No person shall be held criminally or civilly liable under this Code section when its
20 protected computers have been used by unauthorized users to violate this Code section
21 or other laws without such person's knowledge, consent, or approval.

22 (3) A manufacturer or retailer of computer equipment shall not be liable under this Code
23 section, criminally or civilly, to the extent that the manufacturer or retailer is providing
24 third-party branded software that is installed on the computer equipment that the
25 manufacturer or retailer is manufacturing or selling."

26 SECTION 2.

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