

The House Committee on Public Utilities and Telecommunications offers the following substitute to SB 425:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 9 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, the
2 "Georgia Computer Security Act of 2005," so as to enact "The Georgia Child, Family, and
3 School Communications Protection Act"; to provide a short title; to provide for definitions;
4 to prohibit the transmission of certain messages unless the first eight characters of the subject
5 line are "ADV:ADLT"; to provide for a penalty; to provide for civil actions; to create a joint
6 committee of the General Assembly to inquire into and review appropriate safeguards for the
7 transmission of restricted messages; to provide for the committee to submit a report of its
8 findings and recommendations; to change provisions for conformity purposes; to provide for
9 related matters; to provide for an effective date; to provide for automatic repeal under certain
10 circumstances; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 9 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, the "Georgia
14 Computer Security Act of 2005," is amended by designating the existing portion of such
15 article as Part 1 and by inserting at the end of such article the following:

16 style="text-align:center">"Part 2

17 16-9-170.

18 This part shall be known and may be cited as the 'The Georgia Child, Family, and School
19 Communications Protection Act.'

20 16-9-171.

21 As used in this part, the term:

22 (1) 'Contact point' means any electronic identification to which messages can be sent,
23 including any of the following:

S. B. 425 (SUB)

- 1 (A) An instant message identity;
 2 (B) A wireless telephone, a personal digital assistant, a pager number, or any other
 3 similar wireless communication device;
 4 (C) A facsimile number; or
 5 (D) An electronic mail address.

6 (2) 'Person' means an individual, corporation, association, partnership, or any other legal
 7 entity.

8 (3) 'Restricted message' means any communication sent to a contact point that:

- 9 (A) Is harmful to minors, as such phrase is defined in paragraph (4) of subsection (a)
 10 of Code Section 16-12-100.1;
 11 (B) Is of actual or simulated sexually explicit conduct, as such phrase is defined in
 12 paragraph (4) of subsection (a) of Code Section 16-12-100;
 13 (C) Is obscene, as such term is defined in subsection (b) of Code Section 16-12-80;
 14 (D) Has the primary purpose of advertising commercial gambling, within the meaning
 15 of Code Section 16-12-22, or the participation in gambling operations otherwise
 16 prohibited by law; or
 17 (E) Has the primary purpose of advertising prostitution, pimping, pandering, and
 18 related offenses within the meaning of Code Sections 16-6-9, 16-6-10, 16-6-11,
 19 16-6-12, and 16-6-14.

20
 21 16-9-172.

22 No person shall initiate or assist the transmission of a restricted message from a computer
 23 located in Georgia or to a contact point that the sender knows is held by a Georgia resident,
 24 unless the first eight characters of the subject line are 'ADV:ADLT'. As used in this Code
 25 section, the term 'transmission' does not include the acts of an intermediary that transmits,
 26 routes, relays, or temporarily stores, through an automatic technical process, the electronic
 27 mail on behalf of another where the intermediary does not choose the recipient of the
 28 electronic mail.

29 16-9-173.

30 Any person who violates Code Section 16-9-172 shall be subject to a civil penalty in an
 31 amount not to exceed \$1,000.00. Upon a second or subsequent violation of this Code
 32 section, a person shall be guilty of a felony punishable by imprisonment of one to five
 33 years or a fine not to exceed \$200,000.00, or both. Each violation of this part shall
 34 constitute a separate offense, except that all restricted messages sent from one contact point
 35 simultaneously to multiple contact points shall be considered one offense for purposes of
 36 the first offense in violation of Code Section 16-9-172.

1 16-9-174.

2 (a) A civil action based on a violation of this part may be brought:

3 (1) By an owner of the contact point who has received a message in violation of this part;

4 (2) By a person through whose facilities the message was transmitted in violation of this
5 part; or

6 (3) By the Attorney General against a person who has violated this part.

7 (b) In each action brought under this Code section, the prevailing party may be awarded
8 reasonable attorney's fees.

9 (c) A person bringing an action under this Code section may recover:

10 (1) Actual damages, including reasonable attorney's fees; or

11 (2) In lieu of actual damages, the lesser of \$5,000.00 per each message received by a
12 recipient or transmitted or \$250,000.00 for each day that the violation occurs.

13 16-9-175.

14 (a) There is created as a joint committee of the General Assembly the Georgia Child,
15 Family, and School Communications Protection Overview Committee to be composed of
16 five members of the House of Representatives appointed by the Speaker of the House, one
17 of whom shall be a member of the minority party; five members of the Senate appointed
18 by the Senate Committee on Assignments, one of whom shall be a member of the minority
19 party; the chairperson of the House Committee on Public Utilities and Telecommunications
20 or his or her designee; and the chairperson of the Senate Regulated Industries and Utilities
21 Committee or his or her designee. The members of the committee shall serve two-year
22 terms concurrent with their terms as members of the General Assembly. The Speaker of
23 the House of Representatives and the Senate Committee on Assignments shall each
24 designate a cochairperson from among the appointees of their respective houses. The
25 cochairpersons shall serve as such for terms of two years concurrent with their terms as
26 members of the General Assembly. Vacancies in an appointed member's position or in the
27 offices of cochairperson of the committee shall be filled for the unexpired term in the same
28 manner as the original appointment. The committee shall periodically inquire into and
29 review appropriate safeguards for the transmission of restricted messages, as defined in
30 Code Section 16-9-171.

31 (b) The Public Service Commission, the Attorney General, and all other agencies of state
32 government, upon request by the committee, shall assist the committee in the discharge of
33 its duties as set forth in this part. The committee may employ staff and may secure the
34 services of consultants as appropriate and subject to available funding. Upon authorization
35 by joint resolution of the General Assembly, the committee shall have the power while the
36 General Assembly is in session or during the interim between sessions to request the

1 attendance of witnesses and the production of documents in aid of its duties. In addition,
 2 when the General Assembly is not in session, the committee shall have the power to
 3 request the attendance of witnesses and the production of documents in aid of its duties,
 4 upon application of the cochairpersons of the committee, with the concurrence of the
 5 Speaker of the House and President Pro Tempore of the Senate.

6 (c) The committee shall, on or before the fifteenth day of December of each year, and at
 7 such other times as it deems necessary, submit to the General Assembly a report of its
 8 findings and recommendations.

9 (d) The committee is authorized to expend state funds available to the committee for the
 10 discharge of its duties. Said funds may be used for the purposes of compensating staff,
 11 paying for services of consultants, and paying all other necessary expenses incurred by the
 12 committee in performing its duties.

13 (e) The members of the committee shall receive the same compensation, per diem,
 14 expenses, and allowances for their service on the committee as is authorized by law for
 15 members of interim legislative study committees.

16 (f) The funds necessary for the purposes of the committee shall come from the funds
 17 appropriated to and available to the legislative branch of government.

18 (g) This Code section shall be repealed effective December 31, 2012."

19 SECTION 2.

20 Said article is further amended by striking in its entirety Code Section 16-9-150, relating to
 21 a short title, and inserting in lieu thereof the following:

22 "16-9-150.

23 This ~~article~~ part shall be known and may be cited as the 'Georgia Computer Security Act
 24 of 2005.'"

25 SECTION 3.

26 Said article is further amended by striking in its entirety Code Section 16-9-151, relating to
 27 definitions, and inserting in lieu thereof the following:

28 "16-9-151.

29 As used in this ~~chapter~~ part, the term:

30 (1) 'Advertisement' means a communication, the primary purpose of which is the
 31 commercial promotion of a commercial product or service, including content on an
 32 Internet website operated for a commercial purpose.

33 (2) 'Authorized user' with respect to a computer, means a person who owns or is
 34 authorized by the owner or lessee to use the computer.

1 (3) 'Cause to be copied' means to distribute or transfer computer software or any
2 component thereof. Such term shall not include providing:

3 (A) Transmission, routing, provision of intermediate temporary storage, or caching of
4 software;

5 (B) A storage medium, such as a compact disk, website, or computer server, through
6 which the software was distributed by a third party; or

7 (C) An information location tool, such as a directory, index, reference, pointer, or
8 hypertext link, through which the user of the computer located the software.

9 (4) 'Computer software' means a sequence of instructions written in any programming
10 language that is executed on a computer. Such term shall not include a text or data file,
11 a web page, or a data component of a web page that is not executable independently of
12 the web page.

13 (5) 'Computer virus' means a computer program or other set of instructions that is
14 designed to degrade the performance of or disable a computer or computer network and
15 is designed to have the ability to replicate itself on other computers or computer networks
16 without the authorization of the owners of those computers or computer networks.

17 (6) 'Consumer' means an individual who resides in this state and who uses the computer
18 in question primarily for personal, family, or household purposes.

19 (7) 'Damage' means any significant impairment to the integrity or availability of data,
20 software, a system, or information.

21 (8) 'Execute,' when used with respect to computer software, means the performance of
22 the functions or the carrying out of the instructions of the computer software.

23 (9) 'Intentionally deceptive' means any of the following:

24 (A) By means of an intentionally and materially false or fraudulent statement;

25 (B) By means of a statement or description that intentionally omits or misrepresents
26 material information in order to deceive the consumer; or

27 (C) By means of an intentional and material failure to provide any notice to an
28 authorized user regarding the download or installation of software in order to deceive
29 the consumer.

30 (10) 'Internet' means the global information system that is logically linked together by
31 a globally unique address space based on the Internet Protocol or its subsequent
32 extensions; that is able to support communications using the Transmission Control
33 Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol
34 compatible protocols; and that provides, uses, or makes accessible, either publicly or
35 privately, high level services layered on the communications and related infrastructure
36 described in this paragraph.

1 (11) 'Person' means any individual, partnership, corporation, limited liability company,
2 or other organization, or any combination thereof.

3 (12) 'Personally identifiable information' means any of the following:

4 (A) A first name or first initial in combination with a last name;

5 (B) Credit or debit card numbers or other financial account numbers;

6 (C) A password or personal identification number required to access an identified
7 financial account;

8 (D) A social security number; or

9 (E) Any of the following information in a form that personally identifies an authorized
10 user:

11 (i) Account balances;

12 (ii) Overdraft history;

13 (iii) Payment history;

14 (iv) A history of websites visited;

15 (v) A home address;

16 (vi) A work address; or

17 (vii) A record of a purchase or purchases."

18 SECTION 4.

19 Said article is further amended by striking in its entirety subsection (b) of Code Section
20 16-9-152, relating to spyware, browsers, hijacks, and other software prohibited, and inserting
21 in lieu thereof the following:

22 "(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a
23 user's Internet or other network connection or service, or a protected computer, by a
24 telecommunications carrier, cable operator, computer hardware or software provider, or
25 provider of information service or interactive computer service for network or computer
26 security purposes, diagnostics, technical support, repair, network management, network
27 maintenance, authorized updates of software or system firmware, authorized remote system
28 management, or detection or prevention of the unauthorized use of or fraudulent or other
29 illegal activities in connection with a network, service, or computer software, including
30 scanning for and removing software proscribed under this ~~article~~ part."

31 SECTION 5.

32 Said article is further amended by striking in its entirety subsection (b) of Code Section
33 16-9-153, relating to e-mail virus distribution, denial of service attacks, and other conduct
34 prohibited, and inserting in lieu thereof the following:

1 "(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a
 2 user's Internet or other network connection or service, or a protected computer, by a
 3 telecommunications carrier, cable operator, computer hardware or software provider, or
 4 provider of information service or interactive computer service for network or computer
 5 security purposes, diagnostics, technical support, repair, network management, network
 6 maintenance, authorized updates of software or system firmware, authorized remote system
 7 management, or detection or prevention of the unauthorized use of or fraudulent or other
 8 illegal activities in connection with a network, service, or computer software, including
 9 scanning for and removing software proscribed under this ~~article~~ part."

10

SECTION 6.

11 Said article is further amended by striking in its entirety subsection (b) of Code Section
 12 16-9-154, relating to inducement to install, copy, or execute software through
 13 misrepresentation prohibited, and inserting in lieu thereof the following:

14 "(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a
 15 user's Internet or other network connection or service, or a protected computer, by a
 16 telecommunications carrier, cable operator, computer hardware or software provider, or
 17 provider of information service or interactive computer service for network or computer
 18 security purposes, diagnostics, technical support, repair, network management, network
 19 maintenance, authorized updates of software or system firmware, authorized remote system
 20 management, or detection or prevention of the unauthorized use of or fraudulent or other
 21 illegal activities in connection with a network, service, or computer software, including
 22 scanning for and removing software proscribed under this ~~article~~ part."

23

SECTION 7.

24 Said article is further amended by striking in its entirety Code Section 16-9-155, relating to
 25 penalties, and inserting in lieu thereof the following:

26 "16-9-155.

27 (a) Any person who violates the provisions of paragraph (2) of Code Section 16-9-152,
 28 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) (a)(1)(A), (a)(1)(B), or
 29 (a)(1)(C) of Code Section 16-9-153, or paragraph (2) of subsection (a) of Code Section
 30 16-9-153 shall be guilty of a felony and, upon conviction thereof, shall be sentenced to
 31 imprisonment for not less than one nor more than ten years or a fine of not more than \$3
 32 million, or both.

33 (b) The Attorney General may bring a civil action against any person violating this ~~article~~
 34 part to enforce the penalties for the violation and may recover any or all of the following:

1 (1) A civil penalty of up to \$100.00 per violation of this ~~article part~~, or up to \$100,000.00
 2 for a pattern or practice of such violations;

3 (2) Costs and reasonable attorney's fees; and

4 (3) An order to enjoin the violation.

5 (c) In the case of a violation of subparagraph ~~(B)~~ of ~~paragraph (1)~~ of ~~subsection (a)~~
 6 ~~(a)(1)(B)~~ of Code Section 16-9-153 that causes a telecommunications carrier to incur costs
 7 for the origination, transport, or termination of a call triggered using the modem of a
 8 customer of such telecommunications carrier as a result of such violation, the
 9 telecommunications carrier may bring a civil action against the violator to recover any or
 10 all of the following:

11 (1) The charges such carrier is obligated to pay to another carrier or to an information
 12 service provider as a result of the violation, including, but not limited to, charges for the
 13 origination, transport, or termination of the call;

14 (2) Costs of handling customer inquiries or complaints with respect to amounts billed for
 15 such calls;

16 (3) Costs and reasonable attorney's fees; and

17 (4) An order to enjoin the violation.

18 (d) An Internet service provider or software company that expends resources in good faith
 19 assisting consumers or business entities harmed by a violation of this chapter, or a
 20 trademark owner whose mark is used to deceive consumers or business entities in violation
 21 of this chapter, may enforce the violation and may recover any or all of the following:

22 ~~(1)(A)~~ Statutory damages of not more than \$100.00 per violation of this ~~article part~~, or
 23 up to \$1 million for a pattern or practice of such violations;

24 (2) Costs and reasonable attorney's fees; and

25 (3) An order to enjoin the violation."

26 SECTION 8.

27 Said article is further amended by striking in its entirety Code Section 16-9-156, relating to
 28 exceptions, and inserting in lieu thereof the following:

29 "(a) For the purposes of this Code section, the term 'employer' includes a business entity's
 30 officers, directors, parent corporation, subsidiaries, affiliates, and other corporate entities
 31 under common ownership or control within a business enterprise. No employer may be
 32 held criminally or civilly liable under this ~~article part~~ as a result of any actions taken:

33 (1) With respect to computer equipment used by its employees, contractors,
 34 subcontractors, agents, leased employees, or other staff which the employer owns, leases,
 35 or otherwise makes available or allows to be connected to the employer's network or
 36 other computer facilities; or

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

4 (b) No person shall be held criminally or civilly liable under this ~~article~~ part when its
5 protected computers have been used by unauthorized users to violate this ~~article~~ part or
6 other laws without such person's knowledge, consent, or approval.

7 (c) A manufacturer or retailer of computer equipment shall not be liable under this Code
8 section, criminally or civilly, to the extent that the manufacturer or retailer is providing
9 third-party branded software that is installed on the computer equipment that the
10 manufacturer or retailer is manufacturing or selling."

11 **SECTION 9.**

12 Said article is further amended by striking in its entirety Code Section 16-9-157, relating to
13 legislative findings and preemption, and inserting in lieu thereof the following:

14 "16-9-157.

15 The General Assembly finds that this ~~article~~ part is a matter of state-wide concern. This
16 ~~article~~ part supersedes and preempts all rules, regulations, codes, ordinances, and other
17 laws adopted by any county, municipality, consolidated government, or other local
18 governmental agency regarding spyware and notices to consumers from computer software
19 providers regarding information collection."

20 **SECTION 10.**

21 This Act shall become effective upon its approval by the Governor or upon its becoming law
22 without such approval.

23 **SECTION 11.**

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