

Senate Bill 59

By: Senators Staton of the 18th, Heath of the 31st, Powell of the 23rd, Orrock of the 36th,  
Douglas of the 17th and others

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 4 of Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia  
2 Annotated, relating to Internet and electronic mail fraud, so as to provide definitions; to  
3 prohibit a person from using certain computers to relay or retransmit commercial e-mail  
4 messages with the intent to deceive or mislead recipients or an e-mail service provider under  
5 certain circumstances; to prohibit a person from materially falsifying header information in  
6 commercial e-mail messages under certain circumstances; to prohibit a person from  
7 registering for e-mail accounts or domain names under certain circumstances; to provide for  
8 criminal and civil penalties; to provide for forfeiture; to provide for related matters; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Part 4 of Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,  
13 relating to Internet and e-mail fraud, is amended by adding a new Code section to read as  
14 follows:

15 "16-9-109.2.

16 (a) As used in this Code section, the term:

17 (1) 'Commercial e-mail message' means an e-mail message sent primarily for the purpose  
18 of commercial advertisement or promotion of:

19 (A) A commercial product;

20 (B) A commercial service;

21 (C) The content of an Internet website; or

22 (D) A website operated for a commercial purpose.

23 (2) 'Domain name' means any alphanumeric designation that is registered with or  
24 assigned by a domain name registrar, domain name registry, or other domain name  
25 registration authority as part of an e-mail address on the Internet.

26 (3) 'E-mail service provider' means any person, including an Internet service provider,  
27 that is an intermediary in sending and receiving e-mail and that provides to the public the  
28 ability to send or receive e-mail to or from an e-mail account or on-line user account.

29 (4) 'Financial institution' means any financial institution of the type supervised under  
30 Chapter 1 of Title 7, the 'Financial Institutions Code of Georgia,' whether or not state  
31 chartered.

32 (5) 'Header information' means the source, destination, and routing information attached  
33 to an e-mail message, including the originating domain name and originating e-mails, and  
34 any other information that appears in the line identifying or purporting to identify a  
35 person initiating the message, and technical information that authenticates the sender of  
36 an e-mail message for network security or network management purposes.

37 (6) 'Initiate,' when used with respect to a commercial e-mail message, means to originate  
38 or transmit the commercial e-mail message or to procure the origination or transmission  
39 of the commercial e-mail message and does not include actions that constitute routine  
40 conveyances of such commercial e-mail message.

41 (7) 'Internet protocol address' means the string of numbers by which a location on the  
42 Internet is identified by routers or other computers connected to the Internet.

43 (8) 'Materially falsified' means altered or concealed in a manner that would impair the  
44 ability of one of the following to identify, locate, or respond to a person who initiated an  
45 e-mail message or to investigate an alleged violation of this Code section:

46 (A) A recipient of the message;

47 (B) An Internet access service processing the message on behalf of a recipient;

48 (C) A person alleging a violation of this Code section; or

49 (D) A law enforcement agency.

50 (9) 'Multiple' means:

51 (A) More than ten commercial e-mail messages during a 24 hour period;

52 (B) More than 100 commercial e-mail messages during a 30 day period; or

53 (C) More than 1,000 commercial e-mail messages during a one-year period.

54 (10) 'Protected computer' means any computer that, at the time of an alleged violation  
55 of any provision of this Code section involving that computer, was located within the  
56 geographic boundaries of the State of Georgia.

57 (11) 'Routine conveyance' means the transmission, routing, relaying, handling, or storing,  
58 through an automatic technical process, of an e-mail message for which another person  
59 has identified the recipients or provided the recipients' addresses.

60 (b) No person shall conspire to or knowingly:

- 61 (1) Use a protected computer of another to relay or retransmit multiple commercial  
62 e-mail messages with the intent to deceive or mislead recipients of an e-mail service  
63 provider as to the origins of such commercial e-mail messages;
- 64 (2) Materially falsify header information in multiple commercial e-mail messages and  
65 intentionally initiate the transmission of such commercial e-mail messages;
- 66 (3) Register, using information that materially falsifies the identity of the actual  
67 registrant, for 15 or more e-mail accounts or on-line user accounts of two or more domain  
68 names and intentionally initiate the transmission of multiple commercial e-mail messages  
69 from one or any combination of such accounts or domain names;
- 70 (4) Falsely represent the right to use five or more Internet protocol addresses and  
71 intentionally initiate the transmission of multiple commercial e-mail messages from such  
72 Internet protocol addresses;
- 73 (5) Access a protected computer of another without authorization and intentionally  
74 initiate the transmission of multiple commercial e-mail messages from or through such  
75 protected computer;
- 76 (6) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting  
77 addresses to which a commercial e-mail message was transmitted, knowing that:
- 78 (A) The e-mail addresses of the recipients were obtained using an automated means  
79 from an Internet website or proprietary on-line service operated by another person; and
- 80 (B) The website or on-line service included, at the time the addresses were obtained,  
81 a notice stating that the operator of the website or on-line service will not transfer  
82 addresses maintained by the website or on-line service to any other party for the  
83 purposes of initiating or enabling others to initiate e-mail messages; or
- 84 (7) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting  
85 e-mail addresses of recipients obtained using an automated means that generates possible  
86 e-mail addresses by combining names, letters, or numbers into numerous permutations.
- 87 (c)(1) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this  
88 Code section shall be guilty of a felony and upon conviction shall be punished by  
89 imprisonment for a period not to exceed three years or a fine not to exceed \$5,000.00, or  
90 both.
- 91 (2) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this  
92 Code section involving the transmission of more than 250 commercial e-mail messages  
93 during a 24 hour period, 2,500 commercial e-mail messages during any 30 day period,  
94 or 25,000 commercial e-mail messages during any one-year period shall be guilty of a  
95 felony and upon conviction shall be punished by imprisonment for a period not to exceed  
96 five years or a fine not to exceed \$10,000.00, or both.

97 (3) A person who violates paragraph (3) or (4) of subsection (b) of this Code section  
98 involving 20 or more e-mail accounts or ten or more domain names and intentionally  
99 initiates the transmission of multiple commercial e-mail messages from such accounts or  
100 using such domain names shall be guilty of a felony and upon conviction shall be  
101 punished by imprisonment for a period not to exceed five years or a fine not to exceed  
102 \$10,000.00, or both.

103 (4) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this  
104 Code section in a manner that causes a loss of \$500.00 or more during any one-year  
105 period shall be guilty of a felony and upon conviction shall be punished by imprisonment  
106 for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.

107 (5) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this  
108 Code section in concert with three or more other persons as the leader or organizer of the  
109 action that constitutes the violation shall be guilty of a felony and upon conviction shall  
110 be punished by imprisonment for a period not to exceed five years or a fine not to exceed  
111 \$10,000.00, or both.

112 (6) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this  
113 Code section in furtherance of a felony, or who has previously been convicted of an  
114 offense under the laws of this state, another state, or any federal law, involving the  
115 transmission of multiple commercial e-mail messages shall be guilty of a felony and upon  
116 conviction shall be punished by imprisonment for a period not to exceed ten years or a  
117 fine not to exceed \$25,000.00, or both.

118 (7) A person who violates paragraph (6) or (7) of subsection (b) of this Code section  
119 shall be guilty of a felony and upon conviction shall be punished by imprisonment for a  
120 period not to exceed one year or a fine not to exceed \$5,000.00, or both.

121 (d) In addition to any other sentence authorized by law, the court may direct that a person  
122 convicted of a violation of this Code section forfeit to the state:

123 (1) Any moneys and other income, including all proceeds earned but not yet received by  
124 a defendant from a third party as a result of the defendant's violation of this Code section;  
125 and

126 (2) All computer equipment, computer software, and personal property used in  
127 connection with a violation of this Code section known by the owner to have been used  
128 in violation of this Code section.

129 (e)(1) An action brought under this subsection shall be commenced within two years  
130 after the commission of the act.

131 (2) The Attorney General may institute a civil action against a person who violates this  
132 Code section to recover a civil penalty:

133 (A) Not exceeding \$25,000.00 per day of violation; or

134 (B) Not less than \$2.00 nor more than \$8.00 per commercial e-mail message initiated  
135 in violation of this Code section;

136 provided, however, that the amount determined shall not exceed \$2,000,000.00.

137 (3) The Attorney General may seek an injunction in a civil action to prohibit a person  
138 who has engaged in or is engaged in a violation of this Code section from engaging in  
139 further violations.

140 (4) The Attorney General may enforce criminal violations of this Code section.

141 (f) Nothing in this Code section shall be construed to have any effect on the lawfulness of  
142 the adoption, implementation, or enforcement by an e-mail service provider of a policy of  
143 declining to transmit, route, relay, handle, or store certain types of e-mail messages under  
144 any other provision of law."

145 **SECTION 2.**

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