


I MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 317-32 (LS)

Introduced by:

T. A. Morrison 

AN ACT TO ADD A NEW ARTICLE 4 TO CHAPTER 46 OF 9GCA
RELATIVE TO THE CRIME OF PHISHING.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2
3 **Section 1.** A new Article 4 is added to Chapter 46 of 9GCA to read as follows:

4
5 **Article 4**

6 **Anti-Phishing Act**

7 **§46.400. Legislative Findings and Intent.**

8 *I Liheslaturan Guåhan* finds Phishing or Pharming are acts that defraud someone by using
9 a false web site or pretending to be a legitimate business on the Web and fraudulently
10 obtaining identifying information. This act also enables lawsuits by Internet service
11 providers and owners of web pages or trademarks that are used without authorization in
12 the conduct of a violation.

13 It is the intent of *I Liheslatura* to ensure that phishing and pharming are illegal and that
14 the Guam has the ability to prosecute the bad actors that prey on the residents of Guam. It
15 is also the intent of *I Liheslatura* to enable lawsuits by Internet service providers and

2014 APR 14 PM 12:31


1 owners of web pages or trademarks that are used without authorization in the conduct of a
2 violation.

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4 **§46.401. Definitions** As used in this Act:

5 1. “Entity” includes corporations, business trusts, estates, partnerships, limited
6 partnerships, limited liability partnerships, limited liability companies, associations,
7 organizations, joint ventures, governments, governmental subdivisions, agencies, or
8 instrumentalities, or any other legal entity, whether for profit or not-for-profit.

9 2. “Individual” means a natural person.

10 3. “Identifying information” means any information that can be used to access an
11 individual’s financial accounts or to obtain goods and services, including, but not limited
12 to: address, birth date, Social Security number, driver’s license number, non-driver
13 governmental identification number, telephone number, bank account number, student
14 identification, credit or debit card number, personal identification number, unique
15 biometric data, employee or payroll number, automated or electronic signature, computer
16 image, photograph, screen name or password. The term does not include information that
17 is lawfully obtained from publicly available information, or from Federal or local
18 government records lawfully made available to the general public.

19 4. “False pretenses” means the representation of a fact or circumstance which is not true
20 and is calculated to mislead.

21 5. “Web page” means a location that has a single uniform resource locator (URL) with
22 respect to the World Wide Web or another location that can be accessed on the Internet

23 **§46.402. Phishing and Pharming**

1 1. Phishing. – An individual or entity is guilty of phishing if, with intent to defraud or
2 injure an individual, or with knowledge that he is facilitating a fraud or injury to be
3 perpetrated by anyone:

4 (a) the actor makes any communication under false pretenses purporting to be by or
5 on behalf of a legitimate business, without the authority or approval of the business;
6 and

7 (b) the actor uses that communication to induce, request, or solicit any person to
8 provide identifying information or property.

9 2. Pharming. – An individual or entity is guilty of pharming if, with intent to defraud or
10 injure an individual, or with knowledge that he is facilitating a fraud or injury to be
11 perpetrated by anyone:

12 (a) creates or operates a webpage that represents itself as belonging to or being
13 associated with a legitimate business, without the authority or approval of such
14 business, and that may induce any user of the Internet to provide identifying
15 information or property; or

16 (b) alters a setting on a user’s computer or similar device or software program
17 through which the user may search the Internet and thereby causes any user of the
18 Internet to view a communication that represents itself as belonging to or being
19 associated with a legitimate business, which message has been created or is
20 operated without the authority or approval of such legitimate business and induces,
21 requests or solicits any user of the Internet to provide identifying information or
22 property.

23 **§46.403. Immunity for Disabling Phishing and Pharming Sites** No Internet registrar or
24 Internet service provider may be held liable under any provision of the laws of Guam for
25 removing or disabling access to an Internet domain name controlled or operated by such

1 registrar or by such provider or to content that resides on an Internet website or other
2 online location controlled or operated by such provider and that such provider believes in
3 good faith is used to engage in a violation of this Subchapter.

4 **§46.404. Violations**

5 1. A person who violates this section is guilty of a third degree felony, a fine not to exceed
6 Five Thousand (\$5,000) or imprisonment not to exceed Five (5) years, or both.

7 2. The following persons may bring a civil action against a person who violates this
8 subchapter.

9 (a) an Internet service provider who is adversely affected by the violation;

10 (b) an owner of a web page, computer server, or a trademark that is used without
11 authorization in the violation; or

12 (c) the Attorney General

13 3. Except as provided by paragraph 3, a person permitted to bring a civil action may
14 obtain either actual damages for a violation of this Act or a civil penalty not to exceed
15 One Hundred Fifty Thousand Dollars (\$150,000) per violation of this act.

16 **§46.405. Applicability** This Act shall apply to the discovery of phishing or pharming
17 incident that occurs on or after the effective date of this section. This act does not apply
18 to a telecommunications provider's or Internet service provider's good faith transmission
19 or routing of, or intermediate temporary storing or caching of, identifying information.

20 **§46.406. Severability clause.**

21 If any provision of this Act or its application to any person or circumstance is found to be
22 invalid or contrary to law, such invalidity *shall* not affect other provisions or application
23 of this Act which can be given effect without the invalid provisions or application, and to
24 this end the provisions of this Act are severable.

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2 **§46.407. Effective date.** This Act shall take effect in one hundred twenty (120) days after
3 the date of enactment.