

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

Bill No. 318-32 (LS)

Introduced by:

T. A. Morrison ✓

AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 46,
TITLE 9, GUAM CODE ANNOTATED RELATIVE TO
CREATING THE “COMPUTER PROTECTION ACT,”

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2

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

4

5

“Article 5

6

Computer Protection Act

7 §46.500. Legislative Intent

8 It is the intent of *I Liheslatura* to prohibit a person from using specified protected
9 computers to relay or retransmit commercial electronic mail messages with the intent to
10 deceive or mislead recipients or an electronic mail service provider under specified
11 circumstances; prohibits a person from materially falsifying header information in
12 commercial electronic mail messages under specified circumstances; prohibits a person
13 from registering for electronic mail accounts or domain names under specified
14 circumstances; provides for specified penalties and fines; etc.

15 §46.501. Definitions

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1 (1) In this section the following words have the meanings indicated.

2 (2) “Commercial electronic mail message” means an electronic message sent primarily for
3 the purpose of commercial advertisement or promotion of:

4 (I) A commercial product;

5 (II) A commercial service;

6 (III) The content on an Internet website; or

7 (IV) A website operated for a commercial purpose.

8 (3) “Domain name” means any alphanumeric designation that is registered with or
9 assigned by a domain name registrar, domain name registry, or other domain name
10 registration authority as part of an electronic mail address on the Internet.

11 (4) “Electronic mail service provider” means any person, including an Internet service
12 provider, that is an intermediary in sending and receiving electronic mail and that provides
13 to the public the ability to send or receive electronic mail to or from an electronic mail
14 account or online user account.

15 (5) “Financial institution” means any financial institution of the type supervised under
16 11GCA, whether or not locally-chartered.

17 (6) “Header information” means the source, destination, and routing information attached
18 to an electronic mail message, including the originating domain name and originating
19 electronic mails, and any other information that appears in the line identifying or
20 purporting to identify a person initiating the message, and technical information that
21 authenticates the sender of an electronic mail message for network security or network
22 management purposes.

23 (7) The term “initiate”, when used with respect to a commercial electronic mail message,
24 means to originate or transmit the message or to procure the origination or transmission of

1 the message and does not include actions that constitute routine conveyances of such
2 message.

3 (8) "Internet" means the international computer network of both federal and nonfederal
4 interoperable packet switched data networks.

5 (9) "Internet protocol address" means the string of numbers by which a location on the
6 Internet is identified by routers or other computers connected to the Internet.

7 (10) "Materially falsified" means altered or concealed in a manner that would impair the
8 ability of one of the following to identify, locate, or respond to a person who initiated an
9 electronic mail message or to investigate an alleged violation of this section:

10 (I) A recipient of the message;

11 (II) An Internet access service processing the message on behalf of a recipient;

12 (III) A person alleging a violation of this section; or

13 (IV) A law enforcement agency.

14 (11) "Multiple" means:

15 (I) More than ten (10) commercial electronic mail messages during a twenty four -
16 hour (24-hour) period;

17 (II) More than one hundred (100) commercial electronic mail messages during a
18 thirty-day (30-day) period; or

19 (III) More than one thousand (1,000) commercial electronic mail message during a
20 one-year (1-year) period.

21 (12) "Protected computer" means a computer used in intrastate or interstate
22 communication.

1 (13) "Routine conveyance" means the transmission, routing, relaying, handling, or storing,
2 through an automatic technical process, of an electronic mail message for which another
3 person has identified the recipients or provided the recipients' addresses.

4 **§46.502. Violations** A person may not conspire to or knowingly:

5 (1) Use a protected computer of another to relay or retransmit multiple commercial
6 electronic mail messages with the intent to deceive or mislead recipients or an electronic
7 mail service provider as to the origin of the message;

8 (2) Materially falsify header information in multiple commercial electronic mail messages
9 and intentionally initiate the transmission of the messages;

10 (3) Register, using information that materially falsifies the identity of the actual registrant,
11 for fifteen (15) or more electronic mail accounts or on-line user accounts of two or more
12 domain names and intentionally initiate the transmission of multiple commercial
13 electronic mail messages from one or any combination of accounts or domain names;

14 (4) Falsely represent the right to use five (5) or more Internet protocol addresses and
15 intentionally initiate the transmission of multiple commercial electronic mail messages
16 from the Internet protocol addresses;

17 (5) Access a protected computer of another without authorization, and intentionally
18 initiate the transmission of multiple electronic mail advertisements from or through the
19 protected computer;

20 (6) Violate item (1), (2), (3), (4), or (5) of this subsection by providing or selecting
21 addresses to which a message was transmitted, knowing that:

22 (I) The electronic mail addresses of the recipients were obtained using an automated
23 means from an Internet website or proprietary online service operated by another
24 person; and

1 (II) The website or online service included, at the time the addresses were obtained,
2 a notice stating that the operator of the website or online service will not transfer
3 addresses maintained by the website or online service to any other party for the
4 purposes of initiating or enabling others to initiate electronic mail messages; or

5 (7) Violate item (1), (2), (3), (4), or (5) of this subsection by providing or selecting
6 electronic mail addresses of recipients obtained using an automated means that generates
7 possible electronic mail addresses by combining names, letters, or numbers into numerous
8 permutations.

9 **§46.503. Penalties**

10 (1) A person who violates subsection (B)(1), (2), (3), (4), or (5) of this section is guilty of
11 a third degree felony and on conviction is subject to imprisonment not exceeding three (3)
12 years or a fine not exceeding Five Thousand (\$5,000) or both.

13 (2) A person who violates subsection (B)(1), (2), (3), (4), or (5) of this section involving
14 the transmission of more than two hundred fifty (250) commercial electronic mail
15 messages during a twenty-four hour (24-hour) period, two thousand five hundred (2,500)
16 commercial electronic mail messages during any thirty-day (30-day) period, or twenty five
17 thousand (25,000) commercial electronic mail messages during any one-year (1-year)
18 period is guilty of a second degree felony and on conviction is subject to imprisonment
19 not exceeding five (5) years or a fine not exceeding Ten Thousand Dollars (\$10,000) or
20 both.

21 (3) A person who violates subsection (B)(3) or (B)(4) of this section involving twenty
22 (20) or more electronic mail accounts or ten (10) or more domain names and intentionally
23 initiates the transmission of multiple commercial electronic mail messages from the
24 accounts or using the domain names is guilty of a second degree felony and on conviction
25 is subject to imprisonment not exceeding five (5) years or a fine not exceeding Ten
26 Thousand Dollars (\$10,000) or both.

1 (4) A person who violates subsection (B)(1), (2), (3), (4), or (5) of this section that causes
2 a loss of \$1,000 or more during any one-year (1-year) period is guilty of a felony and on
3 conviction is subject to imprisonment not exceeding three (3) years or a fine not
4 exceeding Five Thousand Dollars (\$5,000) or both.

5 (5) A person who violates subsection (B)(1), (2), (3), (4), or (5) of this section in concert
6 with three or more other persons as the leader or organizer of the action that constitutes
7 the violation is guilty of a second degree felony and on conviction is subject to
8 imprisonment not exceeding five (5) years or a fine not exceeding Ten Thousand Dollars
9 (\$10,000) or both.

10 (6) A person who violates subsection (B)(1), (2), (3), (4), or (5) of this section in
11 furtherance of a felony, or who has previously been convicted of an offense under the
12 laws of Guam, another state, or under any Federal law involving the transmission of
13 multiple commercial electronic mail messages is guilty of a second degree felony and on
14 conviction is subject to imprisonment not exceeding ten (10) years or a fine not exceeding
15 Twenty Five Thousand Dollars (\$25,000) or both.

16 (7) A person who violates subsection (b)(6) or (7) of this section is guilty of a felony and
17 on conviction is subject to imprisonment not exceeding one (1) year or a fine not
18 exceeding Five Thousand Dollars (\$5,000) or both.

19 **§46.504. Forfeiture.** In addition to any other sentence authorized by law, the court may
20 direct that a person convicted of a violation of this section forfeit to the territory:

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

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

1 **§46.504. Civil action by Attorney General.**

2 (1) An action brought under this subsection shall be commenced within two (2) years after
3 the commission of the act.

4 (2) The Attorney General may institute a civil action against a person who violates this
5 section to recover a civil penalty not exceeding:

6 (I) \$25,000 per day of violation; or

7 (II) Not less than Two Dollars (\$2) nor more than Eight Dollars (\$8) per
8 commercial electronic mail message initiated in violation of this section.

9 (III) For any violation of this Act, the amount determined under paragraph (2) may
10 not exceed Two Million Dollars (\$2,000,000).

11 (3) The Attorney General may seek an injunction in a civil action to prohibit a person who
12 has engaged in or is engaged in a violation of this section from engaging in the violation.

13 (4) The attorney general may enforce criminal violations of this section.

14 **§46.505. Lawfulness of electronic mail service provider policies.** Nothing in this
15 section shall be construed to have any effect on the lawfulness of the adoption,
16 implementation, or enforcement by an electronic mail service provider of a policy of
17 declining to transmit, route, relay, handle, or store certain types of electronic mail
18 messages under any other provision of law.

19 **§46.506. Severability.** If any provision of this Act or its application to any person or
20 circumstance is found to be invalid or contrary to law, such invalidity *shall* not affect
21 other provisions or application of this Act which can be given effect without the invalid
22 provisions or application, and to this end the provisions of this Act are severable.