

# Anti-Phishing

This Act makes it unlawful for any person to represent oneself, either directly or by implication, to be another person, without the authorization or permission of such other person, through the use of the Internet, electronic mail messages or any other electronic means, including wireless communication, and to solicit, request, or take any action to induce a resident of this state to provide identifying information or identification documents.

The Act makes it unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for such person's own use or the use of a third person, or to sell or distribute the information to another, to:

- (1) Fraudulently obtain, record or access identifying information that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;
- (2) Obtain goods or services through the use of identifying information of such other person;
- (3) Obtain identification documents in such other person's name.

The Act makes it unlawful for any person with the intent to defraud and without the authorization or permission of the person who is the owner or licensee of a Web page or Web site to:

- (1) Knowingly duplicate or mimic all or any portion of the Web site or Web page;
  - (2) Direct or redirect an electronic mail message from the IP address of a person to any other IP address;
  - (3) Use any trademark, logo, name, or copyright of another person on a Web page;
- or
- (4) Create an apparent but false link to a Web page of a person which is directed or redirected to a Web page or IP address other than that of the person represented.

This Act enables the following people to bring an action against a person who violates or the Act:

- (1) A person who:
  - (A) Is engaged in the business of providing Internet access service to the public, owns a Web page, or owns a trademark; and
  - (B) Suffers ascertainable loss by a violation of this Act.

Submitted as:  
Tennessee  
Chapter 566, Public Acts of 2006  
Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as the “Anti-Phishing Act.”
- 2
- 3 Section 2. [*Definitions.*] As used in this Act:
- 4 (a) “Ascertainable loss” means an identifiable deprivation, detriment or injury arising
- 5 from the identity theft or from any unfair, misleading or deceptive act or practice even when the
- 6 precise amount of the loss is not known. Whenever a violation of this part has occurred, an
- 7 ascertainable loss shall be presumed to exist;

8 (b) “Division” means the [Division of Consumer Affairs of the Department of Commerce  
9 and Insurance];

10 (c) “Electronic mail message” means a message sent to a unique destination, commonly  
11 expressed as a string of characters, consisting of a unique user name or mailbox (commonly  
12 referred to as the “local part”) and a reference to an internet domain (commonly referred to as the  
13 “domain part”), whether or not displayed, to which an electronic message can be sent or  
14 delivered;

15 (d) “Identification documents” means any card, certificate or document which identifies or  
16 purports to identify the bearer of such document, whether or not intended for use as identification,  
17 and includes, but is not limited to, documents purporting to be a driver license, nondriver  
18 identification cards, birth certificates, marriage certificates, divorce certificates, passports,  
19 immigration documents, social security cards, employee identification cards, cards issued by the  
20 government to provide benefits of any sort, health care benefit cards, or health benefit  
21 organization, insurance company or managed care organization cards for the purpose of  
22 identifying a person eligible for services;

23 (e) “Identifying information” means, with respect to an individual, any of the following:

24 (1) Social Security number;

25 (2) Driver’s license number;

26 (3) Bank account number;

27 (4) Credit card or debit card number;

28 (5) Personal identification number (PIN);

29 (6) Biometric data;

30 (7) Private medical information (PMI);

31 (8) Fingerprints;

32 (9) Account password; or

33 (10) Any other piece of information that can be used to access an individual’s  
34 financial accounts or obtain identification, act as identification, or obtain goods or services;

35 (f) “Internet” means the global information system that is logically linked together by a  
36 globally unique address space based on the Internet Protocol (IP), or its subsequent extensions,  
37 and that is able to support communications using the Transmission Control Protocol/Internet  
38 Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that  
39 provides, uses, or makes accessible, either publicly or privately, high level services layered on  
40 communications and related infrastructure;

41 (g) “Person” means a natural person, consumer, individual, governmental agency,  
42 partnership, corporation, trust, estate, incorporated or unincorporated association, and any other  
43 legal or commercial entity however organized;

44 (h) [“State Consumer Protection Act”] means [insert citation] and related statutes. Related  
45 statutes specifically include any statute that indicates within the law, regulation or rule that a  
46 violation of that law, regulation or rule is a violation of the [“State Consumer Protection Act”];  
47 and

48 (i) “Web page” means a location that has a single uniform resource locator or other single  
49 location with respect to the Internet.

50  
51 Section 3. [*Fraudulently Obtaining Personal Identifying Information.*]

52 (a) It shall be unlawful for any person to represent oneself, either directly or by  
53 implication, to be another person, without the authorization or permission of such other person,  
54 through the use of the Internet, electronic mail messages or any other electronic means, including  
55 wireless communication, and to solicit, request, or take any action to induce a resident of this  
56 state to provide identifying information or identification documents.

57 (b) It shall be unlawful for any person without the authorization or permission of the  
58 person who is the subject of the identifying information, with the intent to defraud, for such  
59 person's own use or the use of a third person, or to sell or distribute the information to another, to:

60 (1) Fraudulently obtain, record or access identifying information that would assist  
61 in accessing financial resources, obtaining identification documents, or obtaining benefits of such  
62 other person;

63 (2) Obtain goods or services through the use of identifying information of such  
64 other person; or

65 (3) Obtain identification documents in such other person's name.

66 (c) It shall be unlawful for any person with the intent to defraud and without the  
67 authorization or permission of the person who is the owner or licensee of a Web page or Web site  
68 to:

69 (1) Knowingly duplicate or mimic all or any portion of the Web site or Web page;

70 (2) Direct or redirect an electronic mail message from the IP address of a person to  
71 any other IP address;

72 (3) Use any trademark, logo, name, or copyright of another person on a Web page;

73 or

74 (4) Create an apparent but false link to a Web page of a person which is directed or  
75 redirected to a Web page or IP address other than that of the person represented.

76 (d) It shall be unlawful for any person to attempt to commit any of the offenses  
77 enumerated in this section.

78  
79 Section 4. [*People Who May Bring Actions Against Violators of This Act.*]

80 (a) The following people may bring an action against a person who violates or is in  
81 violation of [Section 3] of this Act:

82 (1) A person who:

83 (A) Is engaged in the business of providing internet access service to the  
84 public, owns a Web page, or owns a trademark; and

85 (B) Suffers ascertainable loss by a violation of [Section 3] of this Act. An  
86 action brought under this subdivision may seek to recover the greater of actual damages or [five  
87 hundred thousand dollars (\$500,000)].

88 (2) An individual who suffers an ascertainable loss by a violation of [Section 3] of  
89 this Act may bring an action, but only against a person who has directly violated [Section 3] of  
90 this Act. An action brought under this subdivision may seek to enjoin further violations of  
91 [Section 3] of this Act and to recover the greater of [three (3) times] the amount of actual  
92 damages or [five thousand dollars (\$5,000)], per violation.

93 (b) The [attorney general] or a [district attorney] may bring an action against a person who  
94 violates or is in violation of [Section 3] of this Act to enjoin further violations of [Section 3] of  
95 this Act and to recover a civil penalty of up to [two thousand five hundred dollars (\$2,500)], per  
96 violation.

97 (c) In an action pursuant to this part, a court may, in addition, do either or both of the  
98 following:

99 (1) Increase the recoverable damages to an amount up to [three (3) times] the  
100 damages otherwise recoverable under subdivision (a) in cases in which the defendant has  
101 established a pattern and practice of violating [Section 3] of this Act; or

102 (2) Award costs of the suit and reasonable attorney's fees to a prevailing plaintiff.

103 (d) The remedies provided in this part do not preclude the seeking of remedies, including  
104 criminal remedies, under any other applicable provision of the law.

105 (e) For purposes of subdivision (1) of subsection (a), multiple violations of [Section 3] of  
106 this Act resulting from any single action or conduct shall constitute [one (1) violation].

107 (f) No provider of an interactive computer service may be held liable under this Act or any  
108 other provision of state law for identifying, removing, or disabling access to content that resides  
109 on an Internet Web page or other online location that such provider believes in good faith is used  
110 to engage in a violation of this Act.

111

112 Section 5. [*Violation of State Consumer Protection Act.*]

113 (a) A violation of this Act constitutes a violation of the [State Consumer Protection Act],  
114 compiled in [insert citation].

115 (b) For the purpose of application of the [State Consumer Protection Act], any violation of  
116 the provisions of this Act shall be construed to constitute an unfair or deceptive act or practice  
117 affecting trade or commerce and subject to the penalties and remedies as provided in that Act, in  
118 addition to the penalties and remedies set forth in this Act.

119 (c) If the [division] has reason to believe that any person has violated any provision of this  
120 Act, the [attorney general], at the request of the [division], may institute a proceeding under this  
121 Act.

122

123 Section 6. [*Severability.*] [Insert severability clause.]

124

125 Section 7. [*Repealer.*] [Insert repealer clause.]

126

127 Section 8. [*Effective Date.*] [Insert effective date.]