

March 2012

CRIMES AND OFFENSES Forgery and Fraudulent Practices: Enact the Georgia Child, Family, and School Communications Protection Act; Provide a Short Title; Provide for Definitions; Create a Service to Protect Child, Family, and School Communications; Provide Conditions for Registration; Provide for a Fee; Provide for Procedures; Provide for Verification from the Contents of the Service; Prohibit the Transmission of Certain Messages; Provide for Exceptions; Prohibit the Release of Certain Information; Shield Certain Information from Public Inspection; Provide for a Penalty; Provide for Civil Actions;

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### Recommended Citation

Georgia State University Law Review (2012) "CRIMES AND OFFENSES Forgery and Fraudulent Practices: Enact the Georgia Child, Family, and School Communications Protection Act; Provide a Short Title; Provide for Definitions; Create a Service to Protect Child, Family, and School Communications; Provide Conditions for Registration; Provide for a Fee; Provide for Procedures; Provide for Verification from the Contents of the Service; Prohibit the Transmission of Certain Messages; Provide for Exceptions; Prohibit the Release of Certain Information; Shield Certain Information from Public Inspection; Provide for a Penalty; Provide for Civil Actions; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes," *Georgia State University Law Review*: Vol. 23 : Iss. 1 , Article 8.  
Available at: <http://readingroom.law.gsu.edu/gsulr/vol23/iss1/8>

# Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

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## CRIMES AND OFFENSES

***Forgery and Fraudulent Practices: Enact The Georgia Child, Family, and School Communications Protection Act; Provide a Short Title; Provide for Definitions; Create a Service to Protect Child, Family, and School Communications; Provide Conditions for Registration; Provide for a Fee; Provide for Procedures; Provide for Verification from the Contents of the Service; Prohibit the Transmission of Certain Messages; Provide for Exceptions; Prohibit the Release of Certain Information; Shield Certain Information from Public Inspection; Provide for a Penalty; Provide for Civil Actions; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 16-9-150 to -57  
(amended), 16-9-170 to -75 (new)

BILL NUMBER: SB 425

SUMMARY: The bill as passed by the Senate would create a registry of electronic contact points for children and prevent anyone wishing to send messages advertising content that is illegal for a minor to purchase, view, possess, participate in or receive from sending to a registered contact point. The system would be funded by charging senders a fee for scrubbing their address lists. The bill provides for both criminal and civil penalties. The bill was modified in the House committee to replace the registry with a requirement that messages advertising such things as pornography, gambling and prostitution must contain "ADV:ADLT" in the subject line.

### *History*

A recent national study projected \$12.6 billion in coming-year revenue for the adult entertainment industry.<sup>1</sup> One of the adult entertainment industry's major marketing tools is e-mail.<sup>2</sup> One study found that as many as 80% of minors using e-mail receive inappropriate e-mails.<sup>3</sup> It has even been estimated that 20% to 30% of visitors to pornographic websites are minors.<sup>4</sup> The backers of SB 425 say "[i]t protects families, it protects schools from unwanted, harmful and inappropriate messages."<sup>5</sup>

### *Bill Tracking of SB 425*

#### *Consideration and Passage by the Senate*

Senators Greg Goggans, Sam Zamarripa, Don Balfour, Tommie Williams, and Eric Johnson of the 7th, 36th, 9th, 19th, and 1st districts, respectively, sponsored SB 425.<sup>6</sup> However, all 56 senators signed on to support the bill.<sup>7</sup> On January 13, 2006, the Senate first read SB 425 and the President of the Senate, Mark Taylor, assigned it to the Committee on Science and Technology.<sup>8</sup>

On February 1, 2006 the Committee on Science and Technology favorably reported the bill and introduced a substitute.<sup>9</sup> The Committee made a minor change to clarify the charge for checking contact points and added a section for face-to-face verification and consent.<sup>10</sup> The fee of "1¢ per request" to check a contact point was

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1. WebWire.com, WDC Media PR, Unspam Continues Aggressive Campaign Against E-Porn Targeting Kids: Adult Industry Reaping Huge Profits via E-mail Marketing, <http://www.webwire.com/ViewPressRef.asp?SESSIONID=&ald=7939> (last visited Aug. 17, 2006).

2. *Id.*

3. *Id.*

4. *Id.*

5. See Video Recording of Senate Proceedings, Feb. 8, 2006 (remarks by Sen. Greg Goggans), <http://mediar1.gpb.org/ramgen/leg/2006/sv020806.rm?usehostname> [hereinafter Senate Video].

6. See SB 425, as introduced, 2006 Ga. Gen. Assem.

7. See Senate Video, *supra* note 5.

8. See State of Georgia Final Composite Status Sheet, SB 425, Jan. 13, 2006 (Mar. 30, 2006).

9. See State of Georgia Final Composite Status Sheet, SB 425, Feb. 1, 2006 (Mar. 30, 2006).

10. Compare SB 425, as introduced, 2006 Ga. Gen. Assem., with SB 425 (SCS), 2006 Ga. Gen. Assem.

clarified by changing it to “1¢ per contact point.”<sup>11</sup> Subsection (h) was added to section 16-9-173 to allow an adult in a face-to-face meeting and possessing a government issued ID to consent to receiving messages.<sup>12</sup>

Several minor changes were made to reflect the addition of subsection (h).<sup>13</sup> The language “A person shall not send. . .” was changed to “Except as otherwise provided in this Code section, a person shall not send. . .”<sup>14</sup> The language “The consent of a minor or third party to receive” was changed to “Except as otherwise provided in subsection (h) of this Code section, the consent to receive.”<sup>15</sup>

On February 2, 2006, the Senate read the bill for the second time.<sup>16</sup> The bill was scheduled to be read a third time on February 6, 2006, but all Senate business on that day was postponed so that members could attend the funeral of Frank Eldridge, Jr., who was the current Secretary of the Senate and a former Senator.<sup>17</sup>

On February 8, 2006 Senator Goggans of the 7th took the well to talk about the bill and to introduce a floor amendment.<sup>18</sup> The floor amendment made three clarifications.<sup>19</sup> First, it clarified the fee charged by changing “1¢ per contact point” to “1¢ per contact point checked per check” and replaced the word “division” with “department.”<sup>20</sup> Second, the amendment also inserted the following: “The department shall promulgate rules and regulations governing the implementation of this part.”<sup>21</sup> Third, the amendment modified language listing exceptions that read “[e]xcept as otherwise provided

11. Compare SB 425, as introduced, 2006 Ga. Gen. Assem., with SB 425 (SCS), 2006 Ga. Gen. Assem.

12. Compare SB 425, as introduced, 2006 Ga. Gen. Assem., with SB 425 (SCS), 2006 Ga. Gen. Assem.

13. Compare SB 425, as introduced, 2006 Ga. Gen. Assem., with SB 425 (SCS), 2006 Ga. Gen. Assem.

14. Compare SB 425, as introduced, § 16-9-173(a), 2006 Ga. Gen. Assem., with SB 425 (SCS), § 16-9-173(a), 2006 Ga. Gen. Assem.

15. Compare SB 425, as introduced, § 16-9-173(d), 2006 Ga. Gen. Assem., with SB 425 (SCS), § 16-9-173(d), 2006 Ga. Gen. Assem.

16. See State of Georgia Final Composite Status Sheet, SB 425, Feb. 2, 2006 (Mar. 30, 2006).

17. See *id.*

18. See Senate Video, *supra* vote 5.

19. See SB 425 (SCSFA), 2006 Ga. Gen. Assem.

20. Compare SB 425 (SCS), 2006 Ga. Gen. Assem., with SB 425 (SCSFA), 2006 Ga. Gen. Assem.

21. Compare SB 425 (SCS), 2006 Ga. Gen. Assem., with SB 425 (SCSFA), 2006 Ga. Gen. Assem.

in subsection (h) of this code” to reflect another exception by adding “and in subsection (d) of Code Section 16-9-176.”<sup>22</sup>

After Senator Goggans finished speaking, the President of the Senate asked if anyone had any questions and whether anyone wished to speak.<sup>23</sup> No one came forward.<sup>24</sup> The Senate then voted on the Floor Amendment which passed 35 to 0, and the committee substitute, which passed 42 to 0.<sup>25</sup> A vote was then taken on final passage of the bill and it passed 49 to 0.<sup>26</sup>

### *Consideration by the House*

The bill was first read in the House on February 9, 2006.<sup>27</sup> It was read again for the second time on February 13, 2006, and was sent to the Public Utilities & Telecommunications Committee.<sup>28</sup> On March 24, 2006, the bill was withdrawn from the Judiciary-Non-Civil Committee and reassigned to the Committee on Public Utilities & Telecommunications.<sup>29</sup>

On March 28, 2006, the Committee on Public Utilities & Telecommunications favorably reported the bill with major substantive changes.<sup>30</sup> The Committee added a definition of “restricted message” that includes any communication sent to a contact point that is harmful to minors as defined in section 16-12-100.1, is of actual or simulated sexually explicit conduct, is obscene as defined in section 16-12-80, or has the primary purpose of advertising gambling or prostitution.<sup>31</sup> Additionally, the Committee version dropped the provision for creating a registry of restricted contact points in favor of a provision requiring that any messages

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22. Compare SB 425 (SCS), 2006 Ga. Gen. Assem., with SB 425 (SCSFA), 2006 Ga. Gen. Assem.

23. See Senate Video, *supra* note 5.

24. See *id.*

25. See Georgia Senate Voting Record, SB 425 (Feb. 8, 2006); State of Georgia Final Composite Status Sheet, SB 425, Feb. 8, 2006 (Mar. 30, 2006); Senate Video, *supra* note 5.

26. See Georgia Senate Voting Record, SB 425 (Feb. 8, 2006); State of Georgia Final Composite Status Sheet, SB 425, Feb. 8, 2006 (Mar. 30, 2006); Senate Video, *supra* note 5.

27. See State of Georgia Final Composite Status Sheet, SB 425, Feb. 9, 2006 (Mar. 30, 2006).

28. See State of Georgia Final Composite Status Sheet, SB 425, Feb. 13, 2006 (Mar. 30, 2006).

29. See State of Georgia Final Composite Status Sheet, SB 425, Mar. 24, 2006 (Mar. 30, 2006).

30. See State of Georgia Final Composite Status Sheet, SB 425, Mar. 28, 2006 (Mar. 30, 2006); Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

31. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

meeting the above definition of restricted be required to have “ADV:ADLT” in the subject line.<sup>32</sup> A safe harbor was added for any intermediaries in transmitting the message who did not have a role in choosing the recipient of the message.<sup>33</sup>

The penalty for a first violation of the law was reduced to a civil penalty not to exceed \$1,000, but the penalty for subsequent offenses was maintained at up to five years in prison and a \$200,000 fine, or both.<sup>34</sup> The definition of who is allowed to bring a civil suit for violations was narrowed from “an authorized individual or the registrant of the contact point” to the “owner of the contact point.”<sup>35</sup>

Finally, a section was added to the bill to create the Georgia Child, Family, and School Communications Protection Overview Committee.<sup>36</sup> The committee was to have five members from the House and five from the Senate.<sup>37</sup> At least one member from each was to be from the minority party.<sup>38</sup> The members of the committee were to serve two-year terms and the committee would disband on December 31, 2012.<sup>39</sup> The committee was to report their findings at least once a year to the General Assembly.<sup>40</sup>

There was no further action on the bill after the Committee favorably reported by substitute in the House.<sup>41</sup>

### *Analysis*

#### *As Passed By the Senate*

The bill would amend the Georgia Computer Security Act of 2005 to create a registry to protect minors from electronic communications, to provide for the protection of that registry, and to provide penalties for violations.<sup>42</sup> The primary purpose of the bill is to create a registry

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32. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

33. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

34. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

35. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

36. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

37. See SB 425 (HCS), 2006 Ga. Gen. Assem.

38. See *id.*

39. See *id.*

40. See *id.*

41. See State of Georgia Final Composite Status Sheet, SB 425 Mar. 28, 2006 (Mar. 30, 2006).

42. See SB 425 (SCSFA), 2006 Ga. Gen. Assem.

that allows individuals and organizations to register electronic addresses of minors such as email addresses, instant message names, and cellular phone numbers.<sup>43</sup> Once registered, it would be a violation of Georgia law to send a message to the registered address with the primary purpose of “advertis[ing] or induc[ing] the sale of a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.”<sup>44</sup>

The bill provides both criminal and civil penalties for sending messages to contact points listed in the registry.<sup>45</sup> For criminal penalties, the bill provides that a violation “shall be a computer crime and a felony punishable by incarceration up to five years or a fine not to exceed \$200,000, or both.”<sup>46</sup> However, the bill also allows civil actions to be brought on behalf of a minor who has received a message in violation of the registry.<sup>47</sup> The civil penalty can be either actual damages, including attorney fees, or \$5,000 for each message with a maximum of \$250,000 for each day of violations.<sup>48</sup>

To prevent violations of the registry, the bill would require anyone desiring to send messages to check their addresses against the registry every 30 days.<sup>49</sup> It would not be a violation to send a message to an address that had been registered for less than 30 days.<sup>50</sup> To cover the costs of running the registry, the bill would require anyone checking addresses against the registry to pay \$0.01 per address checked.<sup>51</sup>

As an alternative to checking against the registry, the bill would permit senders to send messages to any address if they have verified that the address is an adult’s address.<sup>52</sup> To verify without using the registry, the bill would require the sender to check a government issued ID in a face-to-face meeting with the address owner and have them sign a consent form.<sup>53</sup> Additionally, the bill would require the

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43. *Id.*

44. *Id.* at § 16-9-173(a).

45. *Id.* at §§ 16-9-175 to -176.

46. *Id.* at § 16-9-175.

47. *Id.* at § 16-9-176.

48. *See* SB 425 (SCSFA), § 16-9-176(c), 2006 Ga. Gen. Assem.

49. *Id.* at § 16-9-173(g).

50. *Id.*

51. *Id.* at § 16-9-172(g).

52. *Id.* at § 16-9-173(h).

53. *Id.*



sender to allow the address owner to rescind the permission at any time.<sup>54</sup>

### *House Committee Substitute*

The substitute bill proposed by the House Committee on Public Utilities and Telecommunications was radically different from the bill as passed by the Senate.<sup>55</sup> The biggest change in the House substitute bill was the Committee's removal of provisions creating a contact point registry.<sup>56</sup> Instead, the bill would require any messages containing adult content to have a subject line containing "ADV:ADLT."<sup>57</sup>

Further, whereas the Senate defined adult content as anything a child is prevented by law from buying, using, or possessing, the House substitute bill provides a list of prohibited content.<sup>58</sup> The list includes anything that "[i]s harmful to minors" as defined in Code section 16-12-100.1, "[i]s of actual or simulated sexually explicit conduct," "[i]s obscene," is advertising gambling, or is advertising prostitution.<sup>59</sup> The House substitute bill limits liability further by only applying to senders who know the recipient is a Georgia resident, while the Senate version presumed guilt if the address had been registered for more than 30 days.<sup>60</sup> The House substitute bill also provides a specific safe harbor for intermediaries such as Internet Service Providers (ISPs), where the ISP did not choose the recipient of the message.<sup>61</sup>

The bill as substituted also cut back the penalty for violation.<sup>62</sup> The bill as passed by the Senate provided a criminal penalty of up to five

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54. See SB 425 (SCSFA), § 16-9-173(h), 2006 Ga. Gen. Assem.

55. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

56. Compare SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

57. SB 425 (HCS), § 16-9-172, 2006 Ga. Gen. Assem.

58. Compare SB 425 (SCSFA), § 16-9-173(a), 2006 Ga. Gen. Assem., with SB 425 (HCS), § 16-9-171, 2006 Ga. Gen. Assem.

59. SB 425 (HCS) § 16-9-171(3), 2006 Ga. Gen. Assem.

60. Compare SB 425 (SCSFA), § 16-9-173(a), 2006 Ga. Gen. Assem., with SB 425 (HCS), § 16-9-172, 2006 Ga. Gen. Assem.

61. Compare SB 425 (SCSFA), § 16-9-173(a), 2006 Ga. Gen. Assem., with SB 425 (HCS), § 16-9-172, 2006 Ga. Gen. Assem.

62. Compare SB 425 (SCSFA), § 16-9-175, 2006 Ga. Gen. Assem., with SB 425 (HCS), § 16-9-173, 2006 Ga. Gen. Assem.

years in prison for any violation.<sup>63</sup> However, the House substitute bill reduced the penalty for a first offense to a civil fine of no more than \$1,000.<sup>64</sup> The two versions do not differ on the civil penalty that can be sought by a recipient of a message in violation of the bill.<sup>65</sup>

### *Proponents of the Bill as Passed by the Senate*

Proponents of the bill as passed by the Senate say that the bill is needed to protect children from pornography.<sup>66</sup> On the Senate floor Senator Goggans said the bill “protects families, it protects schools from unwanted, harmful and inappropriate messages.”<sup>67</sup> Mathew Prince, CEO of Unspam Technologies, says email is becoming a large part of the marketing for pornographers and that many of those emails are ending up in the in-boxes of children and teens.<sup>68</sup> He points to one study finding that “80 percent of minors using e-mail regularly receive inappropriate e-mails.”<sup>69</sup> Sadie Fields of the Georgia Christian Coalition comments that SB 425 “would prohibit those who surf in cyberspace looking for young people in particular to prey upon. It would prohibit them from sending anything that is illegal for a child under 18 years of age which includes pornography, drug and gambling related material, or any other subject matter that is illegal for underage children.”<sup>70</sup> In general, the forces behind SB 425 want to prevent inappropriate email from targeting people under the age of 18.<sup>71</sup>

Proponents of the bill also point to Michigan and Utah, which have passed similar legislation.<sup>72</sup> Those states have implemented similar registries and it has been working well.<sup>73</sup> Senator Goggans noted that

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63. See SB 425 (SCSFA), § 16-9-175, 2006 Ga. Gen. Assem.

64. See SB 425 (HCS), § 16-9-173, 2006 Ga. Gen. Assem.

65. Compare SB 425 (SCSFA), § 16-9-176, 2006 Ga. Gen. Assem., with SB 425 (HCS), § 16-9-174, 2006 Ga. Gen. Assem.

66. See Senate Video, *supra* note 5.

67. See *id.*

68. WDC Media PR, *supra* note 1.

69. *Id.*

70. Sadie Fields, *Keeping the Faith Action Alert: SB 425 – “The Georgia Child, Family, School Communications Act,”* Jan. 23, 2006,

[http://www.gachristiancoalition.org/action/action\\_2006-0123b.htm](http://www.gachristiancoalition.org/action/action_2006-0123b.htm).

71. See Senate Video, *supra* note 5; WDC Media PR, *supra* note 1; Fields, *supra* note 70.

72. See Senate Video, *supra* note 5; WDC Media PR, *supra* note 1.

73. See *id.*

over 250 Email Service Providers who are responsible for more than 1.5 billion emails are already complying with the Utah and Michigan laws.<sup>74</sup>

### *Unspam Technologies*

SB 425, as introduced, is almost identical to those passed in Utah and Michigan.<sup>75</sup> This is not surprising given that all three laws are the result of the lobbying and legislative crafting of Unspam Technologies.<sup>76</sup>

Unspam Technologies is a company headquartered in Utah that has developed software to power registries such as the one proposed in SB 425, as passed by the Senate.<sup>77</sup> Unspam has already won the contracts to run the registries in both Michigan and Utah.<sup>78</sup> Unspam is also involved in the push to create the registry in Georgia.<sup>79</sup> In addition to Utah, Michigan, and Georgia, Unspam is currently targeting Wisconsin and Minnesota.<sup>80</sup> Mathew Prince, Unspam's CEO, said that he anticipates nearly every state having such a registry.<sup>81</sup>

Unspam's business model starts by helping to draft legislation that would create a registry.<sup>82</sup> They then lobby the state legislature to get the bill passed.<sup>83</sup> And finally, they make money by running the registry they lobbied for and by providing consulting services to private companies trying not to run afoul of the laws that Unspam helped to pass.<sup>84</sup>

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74. See Senate Video, *supra* note 5.

75. Compare SB 425, as introduced, 2006 Ga. Gen. Assem., with UTAH CODE ANN. §§ 13-39-101 to -102, 201 to -203, 301 to -304 (2006), and MICH. COMP. LAWS §§ 752.1061 -1068 (2006).

76. Ken Magill, *Unspam Eyes Four New States*, PRIMEDIA INSIGHT, Jan. 17, 2006.

77. Tom Baxter and Jim Galloway, *Reining in E-mail Spurs GOP Split*, ATLANTA J.-CONST., Feb. 20, 2006, at B2.

78. *Id.*

79. Magill, *supra* note 76.

80. *Id.*

81. *Id.*

82. Ken Magill, *Good News and Bad News*, DIRECT, at 10, Mar. 1, 2006 [hereinafter *Good News*]; Unspam Technologies, Inc. Home Page, <http://www.unspam.com/> (last visited Aug. 18, 2006) [hereinafter *Unspam Home Page*]; Unspam Technologies, Inc., About Unspam, <http://www.unspam.com/about.html> (last visited Aug. 18, 2006) [hereinafter *About Unspam*].

83. *Good News*, *supra* note 82; About Unspam, *supra* note 82.

84. *Good News*, *supra* note 82; Unspam Home Page, *supra* note 82; About Unspam, *supra* note 82.

Unspam was an integral part of lobbying for SB 425 in Georgia.<sup>85</sup> The bill, as introduced, is nearly identical to the statutes in Michigan and Utah, where Unspam lobbied for passage and is being paid to run the registry.<sup>86</sup> Additionally, Mathew Prince, the CEO of Unspam, has testified in person against any changes to the bill as it was debated in the House committees.<sup>87</sup>

### *Opponents of the Bill as Passed By the Senate*

The bill passed easily in the Senate with all 56 Senators signing on in support of the bill because it was a priority of the conservative Christian base of the Republican Party, but progress came to a halt in the House when business interests came out against the bill.<sup>88</sup> The bill came out of the House committee with almost all of the tough provisions removed and with severe restrictions on the types of messages covered by the bill.<sup>89</sup> Joseph T. Fleming, a lobbyist for the Georgia Chamber of Commerce, said the bill has unintended consequences for businesses.<sup>90</sup> For instance, SB 425 would make it illegal to advertise airline tickets and the Michigan statute makes it illegal to advertise cars.<sup>91</sup> A major cable television provider stopped email marketing campaigns out of fear that such laws in other states would subject it to liability if an email referenced an R-rated movie.<sup>92</sup> If every state passes a similar law, it could cost a company more than \$350,000 a year to maintain 100,000 email addresses.<sup>93</sup>

Some opponents to these registries also cite First Amendment concerns.<sup>94</sup> Utah has already been sued to overturn parts of its

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85. *Good News*, *supra* note 82; Magill, *supra* note 76.

86. *Compare* SB 425, as introduced, 2006 Ga. Gen. Assem., with UTAH CODE ANN. §§ 13-39-101 to -102, 201 to -203, 301 to -304 (2006), and MICH. COMP. LAWS §§ 752.1061-1068 (2006).

87. *See* Telephone Interview with Jim Flowers, Special Assistant to the CIO, Board of Regents of the University System of Georgia (Mar. 29, 2006) [hereinafter Flowers Interview].

88. Baxter and Galloway, *supra* note 77.

89. *Compare* SB 425 (SCSFA), 2006 Ga. Gen. Assem., with SB 425 (HCS), 2006 Ga. Gen. Assem.

90. Baxter and Galloway, *supra* note 77.

91. *Id.*; Flowers Interview, *supra* note 87.

92. Magill, *supra* note 76.

93. Magill, *supra* note 76.

94. Donna Wentworth, *How to: Chill Speech and Association While Endangering Children*, ELECTRONIC FRONTIER FOUNDATION, July, 14, 2005, <http://www.eff.org/deepinks/archives/003811.php>.

registration law on free speech grounds.<sup>95</sup> At least six groups, such as the American Association of Advertising Agencies, the Electronic Frontier Foundation (EFF), and the Center for Democracy and Technology, have filed amicus briefs supporting the lawsuit.<sup>96</sup> The EFF had this to say about the similar laws in Utah and Michigan:

If you had to disclose to the government everyone whom you planned to email so that it could cross names off your mailing list, you might be less likely to speak in the first place. You'd be further chilled if you had to pay a fee so that the government could silence your speech, and, if you didn't comply, face jail. Welcome to Utah and Michigan.<sup>97</sup>

Even the Federal Trade Commission (FTC) weighed in on email registries in a report to Congress.<sup>98</sup> The FTC determined that a do-not-email registry would not reduce the amount of spam, and may even increase the amount of spam.<sup>99</sup> They concluded, “spammers would most likely use a Registry as a mechanism for verifying the validity of email addresses.”<sup>100</sup> The FTC also concluded that a registry of children’s email accounts would allow “the Internet’s most dangerous users, including pedophiles” to target children.<sup>101</sup> The FTC also noted that a growing portion of the spam is not sent through legitimate means but is sent through millions of home computers infected by viruses, worms, or trojans.<sup>102</sup> These computers are known as zombies.<sup>103</sup> Microsoft’s Anti Spam Manager said that zombies account for as much as 60% of spam.<sup>104</sup> In 2003, an ISP discovered that it had 600,000 zombies on its network.<sup>105</sup>

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95. *Good News*, *supra* note 82.

96. *Good News*, *supra* note 82.

97. Wentworth, *supra* note 94.

98. Federal Trade Commission, NATIONAL DO NOT EMAIL REGISTRY A REPORT TO CONGRESS, at i, June 2004.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 10.

103. *Id.*

104. Federal Trade Commission, NATIONAL DO NOT EMAIL REGISTRY A REPORT TO CONGRESS, at 10, June 2004.

105. *Id.*

### *Conclusion*

The bill, as introduced, would have a significant impact on businesses that use email as a primary means of advertising.<sup>106</sup> There are many businesses that most people would not consider harmful but provide goods or services that a minor is “prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.”<sup>107</sup> These businesses could incur significant expenses from developing software to comply with the registry and incur even more expenses from scrubbing their email lists not only against Georgia’s registry, but also those of Michigan, Utah and any other state that passes similar legislation.<sup>108</sup>

*Frank Cobia*

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106. Baxter and Galloway, *supra* note 77.

107. SB 425 (SCSFA), § 16-9-173(a), 2006 Ga. Gen Assem.

108. See Magill, *supra* note 76.