

BILL ANALYSIS

C.S.H.B. 1430
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Spyware is a class of software that is installed on a computer without consent and that monitors or controls computer use. The software is installed for a myriad of reasons, some of which include tracking a user's online behavior, browsing for market research, sending pop-up ads, redirecting computer users to websites, or recording keystrokes, which in turn could lead to identity theft and fraud. Spyware can be transferred via spam or be bundled in with freeware, shareware, or games downloadable on the internet. Oftentimes, the installation of software results in the drastic slowing of infected computers, in the corrupting of the hard drive, or in the disabling of hardware and software computer settings.

According to the National Cyber Security Alliance, 9 out of 10 computers connected to the Internet are infected with spyware, and a recent audit by Earthlink found that the average computer had more than 26 spyware programs installed. The net impact of this problem will be our citizens' loss of confidence in the internet and their reluctance to engage in online business transactions.

Currently, there exists no statute that expressly prohibits the actions of spyware. C.S.H.B. 1430 seeks to remedy this problem by prohibiting the installation, copying, or use of computer software for fraudulent and unauthorized purposes. C.S.H.B. 1430 establishes a cause of action for providers of computer software and for the owner of a webpage or trademark who are adversely affected. C.S.H.B. 1430 also allows the Attorney General to collect civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution.

ANALYSIS

SECTION 1: Creates a new chapter, chapter 48, in the Business and Commerce code entitled: “Consumer Protection against Computer Spyware Act.”

Section 48.002 Definitions: advertisement, computer software, damage, execute, keystroke-logging function, owner or operator of a computer, person, and personally identifiable information as they apply to this chapter. Section 48.057 specifically defines transmission of computer software. Section 48.056 defines intentionally deceptive means as it applies to this chapter.

Section 48.003 Applicability: states that provisions of C.S.H.B. 1430 do not apply to the means of transmission of computer software, to the storage or hosting of the software program, or to information location tools such as a directory, index, reference pointer or hypertext link.

In addition, several sections of the bill do not apply to interactive computer service providers in performing activities for subscribers related to providing security, diagnostic, repair, software and firmware updates, remote system management, and detection and prevention of unauthorized or illegal activities.

Section 48.051 Prohibitions: prohibits the unauthorized collection and transmission of
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personally identifiable information by intentionally deceptive means. This information includes: credit/debit card numbers, bank account numbers, passwords or access codes, social security number, account balances and overdraft history.

Section 48.052 Prohibitions: prohibits a person who is not the owner or operator of a computer from transmitting software which can modify computer settings, take control of the computer, or modify security settings.

Section 48.053 Prohibitions: prohibits unauthorized interference with the installation and disabling of computer software. This includes attempting to remove or disable security, antispyware or antivirus software installed on the computer.

Section 48.055 Prohibitions: prohibits the attempt to induce a computer owner or operator to install software by intentionally misrepresenting the extent for which the installation is necessary for security or privacy reasons.

Section 48.101 Civil Remedies: allows a computer software provider, and the owner of a web page or trademark to bring both injunctive and civil relief actions against a violator of this chapter.

Section 48.102 Civil Penalty: allows the Attorney General to bring an action against an offender to recover civil penalties and to seek an injunction.

SECTION 2: Effective Date

EFFECTIVE DATE

This Act is effective September 1, 2005.

COMPARISON OF SUBSTITUTE TO ORIGINAL

The substitute differs from the original in that the substitute deletes the language "the primary purpose of which is" and inserts "that includes" on page 1, lines 12-13.

The substitute differs from the original in that the substitute separates out the Attorney General's right to seek a civil penalty and to seek an injunction.