

BILL ANALYSIS

Senate Research Center

S.B. 327
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Criminal Justice
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, advances in technology have made existing law insufficient to combat acts of spyware, which is any technology that aids in gathering information about a person or organization without their knowledge. On the Internet, spyware is programming that is put into a person's computer to gather information about the user and relay it to advertisers or other interested parties. Spyware can be downloaded onto a person's computer when the person installs a new program and often times, users are unaware that they have installed spyware.

S.B. 327 establishes state laws to specifically prohibit acts of spyware and to create an offense and penalty for the unauthorized collection, transmission, and use of personally identifiable information about a person using a computer.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 48, as follows:

CHAPTER 48. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. SHORT TITLE. Authorizes this chapter to be cited as the Consumer Protection Against Computer Spyware Act.

Sec. 48.002. DEFINITIONS. Defines "advertisement," "cause computer software to be copied," "computer software," "damage," "execute," "keystroke-logging function," "owner or operator of a computer," "person," and "personally identifiable information."

Sec. 48.003. APPLICABILITY OF CHAPTER. Provides that Section 48.052, other than Subdivision (1) of that section, and Sections 48.053(4) and 48.055 of this chapter do not apply to certain providers of service. Sets forth the programs for which this chapter does not apply. Defines "multichannel video programming distributor."

[Reserves Sections 48.004-48.050 for expansion.]

SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

Sec. 48.051. UNAUTHORIZED COLLECTION OR CULLING OF PERSONALLY IDENTIFIABLE INFORMATION. Prohibits a person, other than the owner or operator of a computer, from knowingly causing computer software to be copied to a computer in this state and using the software to collect or cull, through intentionally deceptive means, certain personally identifiable information.

Sec. 48.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF COMPUTER SETTINGS; COMPUTER DAMAGE. Prohibits a person, other than the owner or operator of the computer, from knowingly causing computer software to be copied to a

computer in this state and using the software to modify, through intentionally deceptive means, certain settings, including certain security settings, or take control of the computer by accessing or using the computer for certain purposes or opening, without the consent of the owner, certain advertisements.

Sec. 48.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION OR DISABLING OF COMPUTER SOFTWARE. Prohibits a person, other than the owner or operator of the computer, from knowingly causing computer software to be copied to a computer in this state and using the software for certain deceptive purposes.

Sec. 48.054. KNOWING VIOLATION. Provides that a person knowingly violates Sections 48.051, 48.052, or 48.053, if the person acts with actual knowledge of the facts that constitute the violation or consciously avoids information that would establish actual knowledge of those facts.

Sec. 48.055. OTHER PROHIBITED CONDUCT. Prohibits a person, other than the owner or operator of the computer, from inducing the owner or operator of a computer in this state to install a computer software component by intentionally misrepresenting certain facts or copying and executing or providing for the copying and execution of a computer software component to a computer in this state in a deceptive manner with the intent of causing the owner or operator of the computer to use the component in a manner that violates this chapter.

Sec. 48.056. DECEPTIVE ACT OR OMISSION. Provides that, for purposes of this chapter, a person is considered to have acted through intentionally deceptive means if the person, with the intent to deceive an owner or operator of a computer, intentionally makes certain statements or intentionally and materially fails to provide certain notice to the owner or operator of a computer.

[Reserves Sections 48.057-48.100 for expansion.]

SUBCHAPTER C. CIVIL REMEDIES

Sec. 48.101. CIVIL RELIEF. (a) Authorizes certain persons, if adversely affected by the violation, to bring a civil action against a person who violates this chapter.

(b) Authorizes a person bringing an action under this section, in addition to any other remedy provided by law and except as provided by Subsection (g), to seek injunctive relief to restrain the violator from continuing the violation, recover damages in a specified amount, or both.

(c) Authorizes the court to increase an award of actual damages in an action brought under Subsection (b) to an amount not to exceed three times the actual damages sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.

(d) Entitles a plaintiff who prevails in an action filed under Subsection (b) to recover reasonable attorney's fees and court costs.

(e) Provides that each separate violation of this chapter is an actionable violation.

(f) Provides that, for purposes of Subsection (b), violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

(g) Authorizes a telecommunications carrier or cable operator bringing an action under this section, in the case of a violation of Section 48.052 that causes a telecommunications carrier or cable operator to incur costs for the origination, transport, or termination of a call triggered using the modem of a customer of the telecommunications carrier or cable operator as a result of the violation and in

addition to any other remedy provided by law, to apply for certain court orders and recover certain costs and charges.

Sec. 48.102. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates this chapter is liable to the state for a civil penalty in an amount not to exceed \$100,000 for each violation. Authorizes the attorney general to bring suit to recover the civil penalty imposed by this subsection.

(b) Authorizes the attorney general, if it appears that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, to bring an action in the name of this state against the person to restrain the violation by a temporary restraining order or a permanent or temporary injunction.

(c) Entitles the attorney general to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees and court costs.

SECTION 2. Effective date: September 1, 2005.