

## **BILL ANALYSIS**

Senate Research Center  
79R1024 CLG-D

S.B. 327  
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As Filed

### **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 they install a new program and often times, users are unaware that they have installed spyware.

As proposed, 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 identifying 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. COLLECTION AND TRANSMISSION OF CERTAIN INFORMATION BY COMPUTER**

Sec. 48.001. DEFINITIONS. Defines "authorized user," "keylogging program," "spyware," and "identifying information."

Sec. 48.002. PROVISION OF SPYWARE; CONSENT OR NOTICE REQUIRED. (a) Prohibits a person who is not, or does not have the effective consent of, an authorized user of a computer from installing, copying, downloading, or providing for downloading spyware to a computer in this state unless the person provides a clear and conspicuous notice to an authorized user of the computer who is at least 18 years old that meets certain requirements and the person provides a method by which the authorized user of the computer can quickly and easily disable and remove the spyware from the computer without affecting the performance and operation of the computer and, if spyware is being installed, refuse the installation and require that no further contact be made regarding the installation.

(b) Provides that, for purposes of Subsection (a), a person is considered to provide spyware for downloading to a computer if the person provides the spyware as an individual product or the spyware is bundled as a component of another computer program provided or made available by the person, regardless of whether that program can be downloaded from the Internet.

(c) Requires the notice required under Subsection (a) to be provided during the initial execution, start-up, installation, download, configuration, or operation of the computer, as appropriate.

Sec. 48.003. CIVIL PENALTY. Provides that a person who violates this chapter is liable to the state for a civil penalty not to exceed \$1,000 for each violation. Authorizes the

attorney general or the prosecuting attorney in the county in which a violation occurs to bring suit to recover civil penalties imposed, seek an injunction to prevent or restrain a violation of this chapter, and recover reasonable expenses incurred in obtaining a civil penalty under this section.

Sec. 48.004. APPLICABILITY OF CHAPTER. Sets forth specific persons to whom this chapter does not apply.

SECTION 2. Makes application of a civil penalty for a violation of Section 48.002, Business & Commerce Code, as added by this Act prospective to January 1, 2006.

SECTION 3. Effective date: September 1, 2005.