

By: Pena

H.B. No. 1351

A BILL TO BE ENTITLED

AN ACT

relating to the installation, copying, or use of computer software for unauthorized purposes; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 48 to read as follows:

CHAPTER 48. CONSUMER PROTECTION AGAINST

COMPUTER SPYWARE ACT

Sec. 48.001. SHORT TITLE. This chapter may be cited as the Consumer Protection Against Computer Spyware Act.

Sec. 48.002. DEFINITIONS. In this chapter:

(1) "Advertisement" means a communication, the primary purpose of which is the promotion of a commercial product or service, including content on an Internet website operated for a commercial purpose.

(2) "Authorized user," with respect to a computer, means a person who owns the computer or is authorized by the owner or lessee to use the computer. The term does not include a person with authorization to use the computer solely through the use of an end user license agreement.

(3) "Computer software" means a sequence of instructions written in a programming language that is executed on a computer.

(4) "Computer virus" means a computer program or other

1 set of instructions designed:

2 (A) to degrade the performance of or disable a
3 computer or computer network; and

4 (B) to have the ability to replicate itself on
5 another computer or a computer network without the authorization of
6 the owner of the computer or computer network.

7 (5) "Consumer," with respect to a computer, means an
8 individual who uses the computer primarily for personal, family, or
9 household purposes.

10 (6) "Damage," with respect to a computer, means
11 significant impairment to the integrity or availability of data,
12 software, a system, or information.

13 (7) "Execute," with respect to computer software,
14 means to perform a function or carry out instructions.

15 (8) "Keystroke-logging function" means a function of a
16 computer software program that records all keystrokes made by a
17 person using a computer and transfers that information from the
18 computer to another person.

19 (9) "Personally identifiable information," with
20 respect to an individual who is an authorized user, means:

21 (A) the first name or first initial of the
22 individual in combination with the individual's last name;

23 (B) a credit or debit card number;

24 (C) a bank account or other financial account
25 number;

26 (D) a password or personal identification number
27 required to access an identified financial account number;

1 (E) a social security number; or

2 (F) any of the following information if the
3 information alone or in combination with other information
4 personally identifies the individual:

5 (i) account balances;

6 (ii) overdraft history;

7 (iii) payment history;

8 (iv) a history of websites visited;

9 (v) the home or work address of the
10 individual; or

11 (vi) a record of a purchase.

12 Sec. 48.003. DECEPTIVE ACT OR OMISSION. For purposes of
13 this chapter, a person is considered to have acted through
14 intentionally deceptive means if the person, with the intent to
15 deceive another:

16 (1) intentionally makes a false or fraudulent
17 statement;

18 (2) intentionally makes a statement or uses a
19 description that omits or misrepresents material information; or

20 (3) intentionally and materially fails to provide to
21 an authorized user of a computer any notice regarding the
22 installation or execution of computer software.

23 Sec. 48.004. UNAUTHORIZED COLLECTION OR TRANSMISSION OF
24 PERSONALLY IDENTIFIABLE INFORMATION. If a person is not an
25 authorized user of the computer, a person may not knowingly or
26 wilfully copy or cause to be copied computer software to a computer
27 of a consumer residing in this state and use the software to:

1 (1) collect, through intentionally deceptive means:

2 (A) personally identifiable information by using
3 a keystroke-logging function; or

4 (B) information regarding all or substantially
5 all of the websites visited by an authorized user of the computer,
6 other than websites of the provider of the software, if the
7 software was installed in a manner designed to conceal the
8 installation from all authorized users of the computer; or

9 (2) cull, through intentionally deceptive means, the
10 following kinds of personally identifiable information from the
11 consumer's computer hard drive for a purpose wholly unrelated to
12 any of the purposes of the software or service described to an
13 authorized user of the computer:

14 (A) a credit or debit card number;

15 (B) a bank account or other financial account
16 number;

17 (C) a password or personal identification number
18 required to access an identified financial account number;

19 (D) a social security number;

20 (E) account balances; or

21 (F) overdraft history.

22 Sec. 48.005. UNAUTHORIZED TRANSMISSIONS OR MODIFICATIONS
23 OF COMPUTER SETTINGS; COMPUTER DAMAGE. If a person is not an
24 authorized user of the computer, a person may not knowingly or
25 wilfully copy or cause to be copied computer software to a computer
26 of a consumer residing in this state and use the software to:

27 (1) modify, through intentionally deceptive means, a

1 setting that controls:

2 (A) the page that appears when an authorized user
3 of a computer launches an Internet browser or a similar software
4 program to access and navigate the Internet;

5 (B) the default provider or web proxy used by an
6 authorized user of a computer to access or search the Internet; or

7 (C) a list of bookmarks used by an authorized
8 user of a computer to access web pages;

9 (2) take control of the computer by:

10 (A) allowing a person who is not an authorized
11 user of the computer to transmit or relay commercial electronic
12 mail or a computer virus from the computer without the consent of an
13 authorized user of the computer;

14 (B) accessing or using the computer's modem or
15 Internet service to:

16 (i) cause damage to the computer; or

17 (ii) cause an authorized user of the
18 computer to incur financial charges for a service not previously
19 authorized by the user;

20 (C) using the computer as part of an activity
21 performed by a group of computers for purposes of causing damage to
22 another computer, including launching a denial of service attack;
23 or

24 (D) opening, without the consent of an authorized
25 user of the computer, an advertisement that:

26 (i) is in the consumer's Internet browser in
27 a multiple, sequential, or stand-alone form; and

1 (ii) cannot be closed by an ordinarily
2 reasonable person using the computer without closing the browser
3 or shutting down the computer; or

4 (3) modify security settings or other settings on the
5 computer relating to access to or use of the Internet for purposes
6 of:

7 (A) stealing personally identifiable information
8 of an authorized user of the computer; or

9 (B) causing damage to one or more computers.

10 Sec. 48.006. UNAUTHORIZED INTERFERENCE WITH INSTALLATION
11 OR DISABLING OF COMPUTER SOFTWARE. If a person is not an authorized
12 user of the computer, the person may not knowingly or wilfully copy
13 or cause to be copied computer software to a computer of a consumer
14 residing in this state and use the software to:

15 (1) prevent, without the consent of an authorized user
16 of a computer and through intentionally deceptive means, reasonable
17 efforts to block the installation of or to disable computer
18 software by causing computer software that the authorized user has
19 properly removed or disabled to automatically reinstall or
20 reactivate on the computer;

21 (2) intentionally misrepresent to another that
22 computer software will be uninstalled or disabled by the actions of
23 an authorized user of the computer;

24 (3) remove, disable, or render inoperative, through
25 intentionally deceptive means, security, antispyware, or antivirus
26 software installed on the computer; or

27 (4) prevent an authorized user's reasonable efforts to

1 block the installation of or to disable software by:

2 (A) presenting the person with an option to
3 decline the installation of software knowing that, when the option
4 is selected, the installation process will continue to proceed; or

5 (B) misrepresenting that software has been
6 disabled.

7 Sec. 48.007. OTHER PROHIBITED CONDUCT. An unauthorized
8 user of a computer owned by a consumer residing in this state may
9 not:

10 (1) induce an authorized user of the computer to
11 install a computer software component to the computer by
12 intentionally misrepresenting the extent to which the installation
13 is necessary for security or privacy reasons, to open or view text,
14 or to play a particular type of musical or other content; or

15 (2) copy and execute or provide for the copying and
16 execution of a computer software component to the computer in a
17 deceptive manner with the intent of causing an authorized user of
18 the computer to use the component in a manner that violates this
19 section.

20 Sec. 48.008. APPLICABILITY. Section 48.005, other than
21 Subdivision (1) of that section, and Sections 48.006(4) and 48.007
22 do not apply to the monitoring of or interaction with a subscriber's
23 Internet or other network connection or service or a protected
24 computer conducted by a telecommunications carrier, cable
25 operator, computer hardware or software provider, or provider of
26 information service or interactive computer service for:

27 (1) network or computer security purposes;

1 (2) diagnostics, technical support, or repair
2 purposes;

3 (3) authorized updates of software or system firmware;

4 (4) authorized remote system management; or

5 (5) detection or prevention of unauthorized use of or
6 fraudulent or other illegal activities in connection with a
7 network, service, or computer software, including scanning for and
8 removing software proscribed under this chapter.

9 Sec. 48.009. CIVIL PENALTY. (a) A person who violates this
10 chapter is liable to the state for a civil penalty not to exceed
11 \$1,000 for each violation.

12 (b) The attorney general or the prosecuting attorney in the
13 county in which a violation occurs may:

14 (1) bring suit to recover the civil penalty imposed
15 under Subsection (a); or

16 (2) seek an injunction to prevent or restrain a
17 violation of this chapter.

18 (c) The attorney general or the prosecuting attorney may
19 recover reasonable expenses incurred in obtaining a civil penalty
20 under this section, including court costs and reasonable attorney's
21 fees.

22 SECTION 2. A civil penalty for a violation of Chapter 48,
23 Business & Commerce Code, as added by this Act, may be imposed only
24 for a violation that occurs on or after January 1, 2006.

25 SECTION 3. This Act takes effect September 1, 2005.