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H.B. No. 1430

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

SUBCHAPTER A. GENERAL PROVISIONS

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 communication on an Internet website operated for a commercial purpose.

(2) "Computer software" means a sequence of instructions written in a programming language that is executed on a computer. The term does not include:

(A) a web page; or

(B) a data component of a web page that cannot be executed independently of that page.

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

1 (4) "Execute," with respect to computer software,
2 means to perform a function or carry out instructions.

3 (5) "Keystroke-logging function" means a function of a
4 computer software program that records all keystrokes made by a
5 person using a computer and transfers that information from the
6 computer to another person.

7 (6) "Owner or operator of a computer" means the owner
8 or lessee of a computer or an individual using a computer with the
9 authorization of the owner or lessee of the computer. If a computer
10 was sold at retail, the phrase "owner of a computer" does not
11 include the person who owned the computer before the date on which
12 the computer was sold.

13 (7) "Person" means any individual, partnership,
14 corporation, limited liability company, or other organization, or a
15 combination of those organizations.

16 (8) "Personally identifiable information," with
17 respect to an individual who is the owner or operator of a computer,
18 means:

19 (A) first name or first initial in combination
20 with last name;

21 (B) a home or other physical address, including
22 street name;

23 (C) an electronic mail address;

24 (D) a credit or debit card number;

25 (E) a bank account number;

26 (F) a password or access code associated with a
27 credit or debit card or bank account;

1 (G) a social security number, tax identification
2 number, driver's license number, passport number, or other
3 government-issued identification number; or

4 (H) any of the following information if the
5 information alone or in combination with other information
6 personally identifies the individual:

7 (i) account balances;

8 (ii) overdraft history; or

9 (iii) payment history.

10 Sec. 48.003. APPLICABILITY OF CHAPTER. (a) This chapter
11 does not apply to the transmission of computer software to the
12 computer of another by a person providing:

13 (1) the Internet connection, telephone connection, or
14 other means of transmission capability such as a compact disc or
15 digital video disc through which the software was made available;

16 (2) the storage or hosting of the software program or
17 an Internet web page through which the software was made available;
18 or

19 (3) an information location tool, such as a directory,
20 index, reference pointer, or hypertext link, through which the user
21 of the computer located the software, unless the person receives a
22 direct economic benefit from the execution of the software on the
23 computer.

24 (b) Section 48.052, other than Subdivision (1) of that
25 section, and Sections 48.053(4) and 48.055 do not apply to a
26 telecommunications carrier, cable operator, computer hardware or
27 software provider, or provider of information service or

1 interactive computer service that monitors or has interaction with
2 a subscriber's Internet or other network connection or service or a
3 protected computer for:

4 (1) network or computer security purposes;

5 (2) diagnostics, technical support, or repair
6 purposes;

7 (3) authorized updates of computer software or system
8 firmware;

9 (4) authorized remote system management; or

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

14 [Sections 48.004-48.050 reserved for expansion]

15 SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

16 Sec. 48.051. UNAUTHORIZED COLLECTION OR TRANSMISSION OF
17 PERSONALLY IDENTIFIABLE INFORMATION. If a person is not the owner
18 or operator of the computer, the person may not knowingly transmit
19 computer software to a computer in this state and use the software
20 to:

21 (1) collect, through intentionally deceptive means:

22 (A) personally identifiable information by using
23 a keystroke-logging function; or

24 (B) personally identifiable information in a
25 manner that correlates that information with information regarding
26 all or substantially all of the websites visited by the owner or
27 operator of the computer, other than websites operated by the

1 person collecting the information; or

2 (2) cull, through intentionally deceptive means, the
3 following kinds of personally identifiable information from the
4 consumer's computer hard drive for a purpose wholly unrelated to
5 any of the purposes of the software or service described to an owner
6 or operator of the computer:

7 (A) a credit or debit card number;

8 (B) a bank account number;

9 (C) a password or access code associated with a
10 credit or debit card number or a bank account;

11 (D) a social security number;

12 (E) account balances; or

13 (F) overdraft history.

14 Sec. 48.052. UNAUTHORIZED TRANSMISSIONS OR MODIFICATIONS
15 OF COMPUTER SETTINGS; COMPUTER DAMAGE. If a person is not the owner
16 or operator of the computer, the person may not knowingly transmit
17 computer software to a computer in this state and use the software
18 to:

19 (1) modify, through intentionally deceptive means, a
20 setting that controls:

21 (A) the page that appears when an Internet
22 browser or a similar software program is launched to access and
23 navigate the Internet;

24 (B) the default provider or web proxy used to
25 access or search the Internet; or

26 (C) a list of bookmarks used to access web pages;

27 (2) take control of the computer by:

1 (A) accessing or using the computer's modem or
2 Internet service to:

- 3 (i) cause damage to the computer; or
4 (ii) cause the owner or operator of the
5 computer to incur financial charges for a service not previously
6 authorized by the owner or operator; or

7 (B) opening, without the consent of the owner or
8 operator of the computer, an advertisement that:

- 9 (i) is in the owner's or operator's Internet
10 browser in a multiple, sequential, or stand-alone form; and
11 (ii) cannot be closed by an ordinarily
12 reasonable person using the computer without closing the browser
13 or shutting down the computer;

14 (3) modify settings on the computer that relate to
15 access to or use of the Internet and protection of information for
16 purposes of stealing personally identifiable information of the
17 owner or operator of the computer; or

18 (4) modify security settings on the computer relating
19 to access to or use of the Internet for purposes of causing damage
20 to one or more computers.

21 Sec. 48.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION
22 OR DISABLING OF COMPUTER SOFTWARE. If a person is not the owner or
23 operator of the computer, the person may not knowingly transmit
24 computer software to a computer in this state and use the software
25 to:

26 (1) prevent, through intentionally deceptive means,
27 reasonable efforts of the owner or operator of the computer to block

1 the installation or execution of or to disable computer software by
2 causing computer software that the owner or operator has properly
3 removed or disabled to automatically reinstall or reactivate on the
4 computer;

5 (2) intentionally misrepresent to another that
6 computer software will be uninstalled or disabled by the actions of
7 the owner or operator of the computer;

8 (3) remove, disable, or render inoperative, through
9 intentionally deceptive means, security, antispymware, or antivirus
10 computer software installed on the computer; or

11 (4) prevent the owner's or operator's reasonable
12 efforts to block the installation of or to disable computer
13 software by:

14 (A) presenting the owner or operator with an
15 option to decline the installation of software knowing that, when
16 the option is selected, the installation process will continue to
17 proceed; or

18 (B) misrepresenting that software has been
19 disabled.

20 Sec. 48.054. KNOWING VIOLATION. A person knowingly
21 violates Section 48.051, 48.052, or 48.053 if the person:

22 (1) acts with actual knowledge of the facts that
23 constitute the violation; or

24 (2) consciously avoids information that would
25 establish actual knowledge of those facts.

26 Sec. 48.055. OTHER PROHIBITED CONDUCT. If a person is not
27 the owner or operator of the computer, the person may not:

1 (1) induce the owner or operator of a computer in this
2 state to install a computer software component to the computer by
3 intentionally misrepresenting the extent to which the installation
4 is necessary for security or privacy reasons, to open or view text,
5 or to play a particular type of musical or other content; or

6 (2) copy and execute or provide for the copying and
7 execution of a computer software component to a computer in this
8 state in a deceptive manner with the intent of causing the owner or
9 operator of the computer to use the component in a manner that
10 violates this chapter.

11 Sec. 48.056. DECEPTIVE ACT OR OMISSION. For purposes of
12 this chapter, a person is considered to have acted through
13 intentionally deceptive means if the person, with the intent to
14 deceive an owner or operator of a computer:

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

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

19 (3) intentionally and materially fails to provide to
20 the owner or operator any notice regarding the installation or
21 execution of computer software.

22 Sec. 48.057. TRANSMISSION OF COMPUTER SOFTWARE. For
23 purposes of this chapter, a person is considered to have
24 transmitted computer software to a computer if the person
25 transfers, sends, or makes available computer software, or a
26 component of the software, through:

27 (1) the Internet;

- (2) a local area network of computers;
- (3) other non-wire transmission;
- (4) a disc or other data storage device; or
- (5) any other medium.

[Sections 48.058-48.100 reserved for expansion]

SUBCHAPTER C. CIVIL REMEDIES

Sec. 48.101. CIVIL RELIEF. (a) The following persons may bring a civil action against a person who violates this chapter:

- (1) a provider of computer software who is adversely affected by the violation;
- (2) an owner of a web page or trademark who is adversely affected by the violation; or
- (3) the attorney general.

(b) In addition to any other remedy provided by law, a person bringing an action under this section may:

- (1) seek injunctive relief to restrain the violator from continuing the violation;
- (2) recover damages in an amount equal to the greater of:
 - (A) actual damages arising from the violation; or
 - (B) \$100,000 for each violation of the same nature; or

(3) both seek injunctive relief and recover damages as provided by this subsection.

(c) The court may increase an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the

1 violations have occurred with a frequency as to constitute a
2 pattern or practice.

3 (d) A plaintiff who prevails in an action filed under this
4 section is entitled to recover reasonable attorney's fees and court
5 costs.

6 (e) Each separate violation of this chapter is an actionable
7 violation.

8 (f) For purposes of this section, violations are of the same
9 nature if the violations consist of the same course of conduct or
10 action, regardless of the number of times the conduct or act
11 occurred.

12 SECTION 2. This Act takes effect September 1, 2005.