

1 AN ACT

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

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

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

7 CHAPTER 48. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE ACT

8 SUBCHAPTER A. GENERAL PROVISIONS

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

11 Sec. 48.002. DEFINITIONS. In this chapter:

12 (1) "Advertisement" means a communication that
13 includes the promotion of a commercial product or service,
14 including communication on an Internet website operated for a
15 commercial purpose.

16 (2) "Cause computer software to be copied" means to
17 distribute or transfer computer software or a component of computer
18 software. The term does not include:

19 (A) the transmission or routing of computer
20 software or a component of the software;

21 (B) the provision of intermediate temporary
22 storage or caching of software;

23 (C) the provision of a storage medium such as a
24 compact disk;

1 (D) a website;

2 (E) the distribution of computer software by a
3 third party through a computer server; or

4 (F) the provision of an information location
5 tool, such as a directory, index, reference, pointer, or hypertext
6 link, through which the user of a computer is able to locate
7 computer software.

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

11 (A) a web page; or

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

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

17 (5) "Execute," with respect to computer software,
18 means to perform a function or carry out instructions.

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

23 (7) "Owner or operator of a computer" means the owner
24 or lessee of a computer or an individual using a computer with the
25 authorization of the owner or lessee of the computer. If a computer
26 was sold at retail, the phrase "owner of a computer" does not
27 include the person who owned the computer before the date on which

1 the computer was sold.

2 (8) "Person" means any individual, partnership,
3 corporation, limited liability company, or other organization, or a
4 combination of those organizations.

5 (9) "Personally identifiable information," with
6 respect to an individual who is the owner or operator of a computer,
7 means:

8 (A) first name or first initial in combination
9 with last name;

10 (B) a home or other physical address, including
11 street name;

12 (C) an electronic mail address;

13 (D) a credit or debit card number;

14 (E) a bank account number;

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

17 (G) a social security number, tax identification
18 number, driver's license number, passport number, or other
19 government-issued identification number; or

20 (H) any of the following information if the
21 information alone or in combination with other information
22 personally identifies the individual:

23 (i) account balances;

24 (ii) overdraft history; or

25 (iii) payment history.

26 Sec. 48.003. APPLICABILITY OF CHAPTER. (a) Section
27 48.052, other than Subdivision (1) of that section, and Sections

1 48.053(4) and 48.055 do not apply to a telecommunications carrier,
2 cable operator, computer hardware or software provider, or provider
3 of information service or interactive computer service that
4 monitors or has interaction with a subscriber's Internet or other
5 network connection or service or a protected computer for:

6 (1) network or computer security purposes;

7 (2) diagnostics, technical support, or repair
8 purposes;

9 (3) authorized updates of computer software or system
10 firmware;

11 (4) authorized remote system management; or

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

16 (b) This chapter does not apply to:

17 (1) the use of a navigation device, any interaction
18 with a navigation device, or the installation or use of computer
19 software on a navigation device by a multichannel video programming
20 distributor or video programmer in connection with the provision of
21 multichannel video programming or other services offered over a
22 multichannel video programming system if the provision of the
23 programming or other service is subject to 47 U.S.C. Section 338(i)
24 or 551; or

25 (2) the collection or disclosure of subscriber
26 information by a multichannel video programming distributor or
27 video programmer in connection with the provision of multichannel

1 video programming or other services offered over a multichannel
2 video programming system if the collection or disclosure of the
3 information is subject to 47 U.S.C. Section 338(i) or 551.

4 (c) In this section, "multichannel video programming
5 distributor" has the meaning assigned by 47 U.S.C. Section 522(13).

6 [Sections 48.004-48.050 reserved for expansion]

7 SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

8 Sec. 48.051. UNAUTHORIZED COLLECTION OR CULLING OF
9 PERSONALLY IDENTIFIABLE INFORMATION. If a person is not the owner
10 or operator of the computer, the person may not knowingly cause
11 computer software to be copied to a computer in this state and use
12 the software to:

13 (1) collect, through intentionally deceptive means:

14 (A) personally identifiable information by using
15 a keystroke-logging function; or

16 (B) personally identifiable information in a
17 manner that correlates that information with information regarding
18 all or substantially all of the websites visited by the owner or
19 operator of the computer, other than websites operated by the
20 person collecting the information; or

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

26 (A) a credit or debit card number;

27 (B) a bank account number;

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

3 (D) a social security number;

4 (E) account balances; or

5 (F) overdraft history.

6 Sec. 48.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF
7 COMPUTER SETTINGS; COMPUTER DAMAGE. If a person is not the owner or
8 operator of the computer, the person may not knowingly cause
9 computer software to be copied to a computer in this state and use
10 the software to:

11 (1) modify, through intentionally deceptive means, a
12 setting that controls:

13 (A) the page that appears when an Internet
14 browser or a similar software program is launched to access and
15 navigate the Internet;

16 (B) the default provider or web proxy used to
17 access or search the Internet; or

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

19 (2) take control of the computer by:

20 (A) accessing or using the computer's modem or
21 Internet service to:

22 (i) cause damage to the computer;

23 (ii) cause the owner or operator of the
24 computer to incur financial charges for a service not previously
25 authorized by the owner or operator; or

26 (iii) cause a third party affected by the
27 conduct to incur financial charges for a service not previously

1 authorized by the third party; or

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

4 (i) is in the owner's or operator's Internet
5 browser in a multiple, sequential, or stand-alone form; and

6 (ii) cannot be closed by an ordinarily
7 reasonable person using the computer without closing the browser or
8 shutting down the computer;

9 (3) modify settings on the computer that relate to
10 access to or use of the Internet and protection of information for
11 purposes of stealing personally identifiable information of the
12 owner or operator of the computer; or

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

16 Sec. 48.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION
17 OR DISABLING OF COMPUTER SOFTWARE. If a person is not the owner or
18 operator of the computer, the person may not knowingly cause
19 computer software to be copied to a computer in this state and use
20 the software to:

21 (1) prevent, through intentionally deceptive means,
22 reasonable efforts of the owner or operator of the computer to block
23 the installation or execution of or to disable computer software by
24 causing computer software that the owner or operator has properly
25 removed or disabled to automatically reinstall or reactivate on the
26 computer;

27 (2) intentionally misrepresent to another that

1 computer software will be uninstalled or disabled by the actions of
2 the owner or operator of the computer;

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

6 (4) prevent the owner's or operator's reasonable
7 efforts to block the installation of or to disable computer
8 software by:

9 (A) presenting the owner or operator with an
10 option to decline the installation of software knowing that, when
11 the option is selected, the installation process will continue to
12 proceed; or

13 (B) misrepresenting that software has been
14 disabled;

15 (5) change the name, location, or other designation of
16 computer software to prevent the owner from locating and removing
17 the software; or

18 (6) create randomized or intentionally deceptive file
19 names or random or intentionally deceptive directory folders,
20 formats, or registry entries to avoid detection and prevent the
21 owner from removing computer software.

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

24 (1) acts with actual knowledge of the facts that
25 constitute the violation; or

26 (2) consciously avoids information that would
27 establish actual knowledge of those facts.

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

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

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

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

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

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

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

24 [Sections 48.057-48.100 reserved for expansion]

25 SUBCHAPTER C. CIVIL REMEDIES

26 Sec. 48.101. CIVIL RELIEF. (a) The following persons, if
27 adversely affected by the violation, may bring a civil action

1 against a person who violates this chapter:

2 (1) a provider of computer software;

3 (2) an owner of a web page or trademark;

4 (3) a telecommunications carrier;

5 (4) a cable operator; or

6 (5) an Internet service provider.

7 (b) In addition to any other remedy provided by law and
8 except as provided by Subsection (g), a person bringing an action
9 under this section may:

10 (1) seek injunctive relief to restrain the violator
11 from continuing the violation;

12 (2) recover damages in an amount equal to the greater
13 of:

14 (A) actual damages arising from the violation; or

15 (B) \$100,000 for each violation of the same
16 nature; or

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

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

24 (d) A plaintiff who prevails in an action filed under
25 Subsection (b) is entitled to recover reasonable attorney's fees
26 and court costs.

27 (e) Each separate violation of this chapter is an actionable

1 violation.

2 (f) For purposes of Subsection (b), violations are of the
3 same nature if the violations consist of the same course of conduct
4 or action, regardless of the number of times the conduct or act
5 occurred.

6 (g) In the case of a violation of Section 48.052 that causes
7 a telecommunications carrier or cable operator to incur costs for
8 the origination, transport, or termination of a call triggered
9 using the modem of a customer of the telecommunications carrier or
10 cable operator as a result of the violation and in addition to any
11 other remedy provided by law, a telecommunications carrier or cable
12 operator bringing an action under this section may:

13 (1) apply to a court for an order to enjoin the
14 violation;

15 (2) recover the charges the telecommunications
16 carrier or cable operator is obligated to pay to a
17 telecommunications carrier, cable operator, other provider of
18 transmission capability, or an information service provider as a
19 result of the violation, including charges for the origination,
20 transport, or termination of the call;

21 (3) recover the costs of handling customer inquiries
22 or complaints with respect to amounts billed for calls as a result
23 of the violation;

24 (4) recover other costs, including court costs, and
25 reasonable attorney's fees; or

26 (5) both apply for injunctive relief and recover
27 charges and other costs as provided by this subsection.

1 Sec. 48.102. CIVIL PENALTY; INJUNCTION. (a) A person who
2 violates this chapter is liable to the state for a civil penalty in
3 an amount not to exceed \$100,000 for each violation. The attorney
4 general may bring suit to recover the civil penalty imposed by this
5 subsection.

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

12 (c) The attorney general is entitled to recover reasonable
13 expenses incurred in obtaining injunctive relief, civil penalties,
14 or both, under this section, including reasonable attorney's fees
15 and court costs.

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

S.B. No. 327

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 327 passed the Senate on April 14, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2005, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 327 passed the House, with amendments, on May 25, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor