

By: Zaffirini, et al.

S.B. No. 327

Substitute the following for S.B. No. 327:

By: Elkins

C.S.S.B. No. 327

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 that includes 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;
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 (iii) cause a third party affected by the
8 conduct to incur financial charges for a service not previously
9 authorized by the third party; or

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

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

14 (ii) cannot be closed by an ordinarily
15 reasonable person using the computer without closing the browser or
16 shutting down the computer;

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

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

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

1 to:

2 (1) prevent, through intentionally deceptive means,
3 reasonable efforts of the owner or operator of the computer to block
4 the installation or execution of or to disable computer software by
5 causing computer software that the owner or operator has properly
6 removed or disabled to automatically reinstall or reactivate on the
7 computer;

8 (2) intentionally misrepresent to another that
9 computer software will be uninstalled or disabled by the actions of
10 the owner or operator of the computer;

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

14 (4) prevent the owner's or operator's reasonable
15 efforts to block the installation of or to disable computer
16 software by:

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

21 (B) misrepresenting that software has been
22 disabled.

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

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

27 (2) consciously avoids information that would

1 establish actual knowledge of those facts.

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

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

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

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

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

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

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

25 Sec. 48.057. TRANSMISSION OF COMPUTER SOFTWARE. For
26 purposes of this chapter, a person is considered to have
27 transmitted computer software to a computer if the person

1 transfers, sends, or makes available computer software, or a
2 component of the software, through:

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

8 [Sections 48.058-48.100 reserved for expansion]

9 SUBCHAPTER C. CIVIL REMEDIES

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

- 12 (1) a provider of computer software who is adversely
13 affected by the violation;
14 (2) an owner of a web page or trademark who is
15 adversely affected by the violation; or
16 (3) a telecommunications carrier or Internet service
17 provider who is adversely affected by the violation.

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

- 21 (1) seek injunctive relief to restrain the violator
22 from continuing the violation;
23 (2) recover damages in an amount equal to the greater
24 of:

- 25 (A) actual damages arising from the violation; or
26 (B) \$100,000 for each violation of the same
27 nature; or

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

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

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

11 (e) Each separate violation of this chapter is an actionable
12 violation.

13 (f) For purposes of Subsection (b), violations are of the
14 same nature if the violations consist of the same course of conduct
15 or action, regardless of the number of times the conduct or act
16 occurred.

17 (g) In the case of a violation of Section 48.052 that causes
18 a telecommunications carrier to incur costs for the origination,
19 transport, or termination of a call triggered using the modem of a
20 customer of the carrier as a result of the violation and in addition
21 to any other remedy provided by law, a telecommunications carrier
22 bringing an action under this section may:

23 (1) apply to a court for an order to enjoin the
24 violation;

25 (2) recover the charges the carrier is obligated to
26 pay to another carrier or an information service provider as a
27 result of the violation, including charges for the origination,

1 transport, or termination of the call;

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

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

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

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

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

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

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