

By: Zaffirini

S.B. No. 327

A BILL TO BE ENTITLED

AN ACT

relating to the unauthorized collection and transmission of certain information by computer; 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. COLLECTION AND TRANSMISSION OF CERTAIN INFORMATION BY
COMPUTER

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Authorized user" with respect to a computer means a person who:

(A) owns the computer; or

(B) is authorized by the owner to use or exercise control over the computer.

(2) "Keylogging program" means a computer program that:

(A) is installed on a computer without the knowledge of an authorized user of the computer; and

(B) transmits electronic communications displaying all of the keystrokes made by a person using the computer to another person.

(3) "Spyware" means an executable computer program, including a keylogging program, that automatically and without the knowledge or control of a person using a computer collects and

1 transmits to another person:

2 (A) information about the person using the
3 computer, including the person's identifying information; or

4 (B) information regarding the use of a computer,
5 including which Internet sites are visited by a person using the
6 computer.

7 (4) "Identifying information" has the meaning
8 assigned by Section 32.51, Penal Code.

9 Sec. 48.002. PROVISION OF SPYWARE; CONSENT OR NOTICE
10 REQUIRED. (a) If a person is not, or does not have the effective
11 consent of, an authorized user of the computer, a person may not
12 install, copy, download, or provide for downloading spyware to a
13 computer in this state unless:

14 (1) the person provides a clear and conspicuous notice
15 to an authorized user of the computer who is 18 years of age or older
16 that:

17 (A) appears set out from any electronic window or
18 form visible on the computer;

19 (B) states that spyware is being installed on,
20 copied to, or downloaded to the computer, as appropriate;

21 (C) describes the type of information that is
22 being collected and the name and address of the other person to whom
23 the information is being transmitted; and

24 (D) describes how the spyware is intended to
25 affect the performance or operation of the computer; and

26 (2) the person provides a method by which the
27 authorized user of the computer can:

1 (A) quickly and easily disable and remove the
2 spyware from the computer without affecting the performance or
3 operation of the computer; and

4 (B) if spyware is being installed, refuse the
5 installation and require that no further contact be made regarding
6 the installation.

7 (b) For purposes of Subsection (a), a person is considered
8 to provide spyware for downloading to a computer if:

9 (1) the person provides the spyware as an individual
10 product; or

11 (2) the spyware is bundled as a component of another
12 computer program provided or made available by the person,
13 regardless of whether that program can be downloaded from the
14 Internet.

15 (c) The notice required by Subsection (a) must be provided
16 during the initial execution, start-up, installation, download,
17 configuration, or operation of the computer, as appropriate.

18 Sec. 48.003. CIVIL PENALTY. (a) A person who violates this
19 chapter is liable to the state for a civil penalty not to exceed
20 \$1,000 for each violation.

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

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

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

27 (c) The attorney general or the prosecuting attorney may

1 recover reasonable expenses incurred in obtaining a civil penalty
2 under this section, including court costs and reasonable attorney's
3 fees.

4 Sec. 48.004. APPLICABILITY OF CHAPTER. This chapter does
5 not apply to a person who makes available to an authorized user of a
6 computer software that is:

7 (1) installed on, copied to, or downloaded to a
8 computer solely to diagnose or resolve technical difficulties;

9 (2) intended solely to facilitate ordinary and
10 expected access to and use of the computer; or

11 (3) considered reasonably necessary for any
12 legitimate law enforcement purpose as authorized by law.

13 SECTION 2. A civil penalty for a violation of Section
14 48.002, Business & Commerce Code, as added by this Act, may be
15 imposed only for a violation that occurs on or after January 1,
16 2006.

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