

1-1 By: Zaffirini S.B. No. 327
1-2 (In the Senate - Filed February 2, 2005; February 7, 2005,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 327 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the installation, copying, or use of computer software
1-11 for unauthorized purposes; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 4, Business & Commerce Code, is amended by
1-14 adding Chapter 48 to read as follows:

1-15 CHAPTER 48. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE ACT

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 48.001. SHORT TITLE. This chapter may be cited as the
1-18 Consumer Protection Against Computer Spyware Act.

1-19 Sec. 48.002. DEFINITIONS. In this chapter:

1-20 (1) "Advertisement" means a communication, the
1-21 primary purpose of which is the promotion of a commercial product or
1-22 service, including communication on an Internet website operated
1-23 for a commercial purpose.

1-24 (2) "Computer software" means a sequence of
1-25 instructions written in a programming language that is executed on
1-26 a computer. The term does not include:

1-27 (A) a web page; or

1-28 (B) a data component of a web page that cannot be
1-29 executed independently of that page.

1-30 (3) "Damage," with respect to a computer, means
1-31 significant impairment to the integrity or availability of data,
1-32 computer software, a system, or information.

1-33 (4) "Execute," with respect to computer software,
1-34 means to perform a function or carry out instructions.

1-35 (5) "Keystroke-logging function" means a function of a
1-36 computer software program that records all keystrokes made by a
1-37 person using a computer and transfers that information from the
1-38 computer to another person.

1-39 (6) "Owner or operator of a computer" means the owner
1-40 or lessee of a computer or an individual using a computer with the
1-41 authorization of the owner or lessee of the computer. If a computer
1-42 was sold at retail, the phrase "owner of a computer" does not
1-43 include the person who owned the computer before the date on which
1-44 the computer was sold.

1-45 (7) "Person" means any individual, partnership,
1-46 corporation, limited liability company, or other organization, or a
1-47 combination of those organizations.

1-48 (8) "Personally identifiable information," with
1-49 respect to an individual who is the owner or operator of a computer,
1-50 means:

1-51 (A) first name or first initial in combination
1-52 with last name;

1-53 (B) a home or other physical address, including
1-54 street name;

1-55 (C) an electronic mail address;

1-56 (D) a credit or debit card number;

1-57 (E) a bank account number;

1-58 (F) a password or access code associated with a
1-59 credit or debit card or bank account;

1-60 (G) a social security number, tax identification
1-61 number, driver's license number, passport number, or other
1-62 government-issued identification number; or

1-63 (H) any of the following information if the

2-1 information alone or in combination with other information
 2-2 personally identifies the individual:

- 2-3 (i) account balances;
 2-4 (ii) overdraft history; or
 2-5 (iii) payment history.

2-6 Sec. 48.003. APPLICABILITY OF CHAPTER. (a) This chapter
 2-7 does not apply to the transmission of computer software to the
 2-8 computer of another by a person providing:

2-9 (1) the Internet connection, telephone connection, or
 2-10 other means of transmission capability such as a compact disc or
 2-11 digital video disc through which the software was made available;

2-12 (2) the storage or hosting of the software program or
 2-13 an Internet web page through which the software was made available;
 2-14 or

2-15 (3) an information location tool, such as a directory,
 2-16 index, reference pointer, or hypertext link, through which the user
 2-17 of the computer located the software, unless the person receives a
 2-18 direct economic benefit from the execution of the software on the
 2-19 computer.

2-20 (b) Section 48.052, other than Subdivision (1) of that
 2-21 section, and Sections 48.053(4) and 48.055 do not apply to a
 2-22 telecommunications carrier, cable operator, computer hardware or
 2-23 software provider, or provider of information service or
 2-24 interactive computer service that monitors or has interaction with
 2-25 a subscriber's Internet or other network connection or service or a
 2-26 protected computer for:

2-27 (1) network or computer security purposes;
 2-28 (2) diagnostics, technical support, or repair
 2-29 purposes;

2-30 (3) authorized updates of computer software or system
 2-31 firmware;

2-32 (4) authorized remote system management; or
 2-33 (5) detection or prevention of unauthorized use of or
 2-34 fraudulent or other illegal activities in connection with a
 2-35 network, service, or computer software, including scanning for and
 2-36 removing software proscribed under this chapter.

2-37 [Sections 48.004-48.050 reserved for expansion]

2-38 SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

2-39 Sec. 48.051. UNAUTHORIZED COLLECTION OR TRANSMISSION OF
 2-40 PERSONALLY IDENTIFIABLE INFORMATION. If a person is not the owner
 2-41 or operator of the computer, the person may not knowingly transmit
 2-42 computer software to a computer in this state and use the software
 2-43 to:

2-44 (1) collect, through intentionally deceptive means:
 2-45 (A) personally identifiable information by using
 2-46 a keystroke-logging function; or

2-47 (B) personally identifiable information in a
 2-48 manner that correlates that information with information regarding
 2-49 all or substantially all of the websites visited by the owner or
 2-50 operator of the computer, other than websites operated by the
 2-51 person collecting the information; or

2-52 (2) cull, through intentionally deceptive means, the
 2-53 following kinds of personally identifiable information from the
 2-54 consumer's computer hard drive for a purpose wholly unrelated to
 2-55 any of the purposes of the software or service described to an owner
 2-56 or operator of the computer:

2-57 (A) a credit or debit card number;
 2-58 (B) a bank account number;
 2-59 (C) a password or access code associated with a
 2-60 credit or debit card number or a bank account;

2-61 (D) a social security number;

2-62 (E) account balances; or

2-63 (F) overdraft history.

2-64 Sec. 48.052. UNAUTHORIZED TRANSMISSIONS OR MODIFICATIONS
 2-65 OF COMPUTER SETTINGS; COMPUTER DAMAGE. If a person is not the owner
 2-66 or operator of the computer, the person may not knowingly transmit
 2-67 computer software to a computer in this state and use the software
 2-68 to:

2-69 (1) modify, through intentionally deceptive means, a

3-1 setting that controls:
3-2 (A) the page that appears when an Internet
3-3 browser or a similar software program is launched to access and
3-4 navigate the Internet;
3-5 (B) the default provider or web proxy used to
3-6 access or search the Internet; or
3-7 (C) a list of bookmarks used to access web pages;
3-8 (2) take control of the computer by:
3-9 (A) accessing or using the computer's modem or
3-10 Internet service to:
3-11 (i) cause damage to the computer; or
3-12 (ii) cause the owner or operator of the
3-13 computer to incur financial charges for a service not previously
3-14 authorized by the owner or operator; or
3-15 (B) opening, without the consent of the owner or
3-16 operator of the computer, an advertisement that:
3-17 (i) is in the owner's or operator's Internet
3-18 browser in a multiple, sequential, or stand-alone form; and
3-19 (ii) cannot be closed by an ordinarily
3-20 reasonable person using the computer without closing the browser or
3-21 shutting down the computer;
3-22 (3) modify settings on the computer that relate to
3-23 access to or use of the Internet and protection of information for
3-24 purposes of stealing personally identifiable information of the
3-25 owner or operator of the computer; or
3-26 (4) modify security settings on the computer relating
3-27 to access to or use of the Internet for purposes of causing damage
3-28 to one or more computers.
3-29 Sec. 48.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION
3-30 OR DISABLING OF COMPUTER SOFTWARE. If a person is not the owner or
3-31 operator of the computer, the person may not knowingly transmit
3-32 computer software to a computer in this state and use the software
3-33 to:
3-34 (1) prevent, through intentionally deceptive means,
3-35 reasonable efforts of the owner or operator of the computer to block
3-36 the installation or execution of or to disable computer software by
3-37 causing computer software that the owner or operator has properly
3-38 removed or disabled to automatically reinstall or reactivate on the
3-39 computer;
3-40 (2) intentionally misrepresent to another that
3-41 computer software will be uninstalled or disabled by the actions of
3-42 the owner or operator of the computer;
3-43 (3) remove, disable, or render inoperative, through
3-44 intentionally deceptive means, security, antispyware, or antivirus
3-45 computer software installed on the computer; or
3-46 (4) prevent the owner's or operator's reasonable
3-47 efforts to block the installation of or to disable computer
3-48 software by:
3-49 (A) presenting the owner or operator with an
3-50 option to decline the installation of software knowing that, when
3-51 the option is selected, the installation process will continue to
3-52 proceed; or
3-53 (B) misrepresenting that software has been
3-54 disabled.
3-55 Sec. 48.054. KNOWING VIOLATION. A person knowingly
3-56 violates Section 48.051, 48.052, or 48.053 if the person:
3-57 (1) acts with actual knowledge of the facts that
3-58 constitute the violation; or
3-59 (2) consciously avoids information that would
3-60 establish actual knowledge of those facts.
3-61 Sec. 48.055. OTHER PROHIBITED CONDUCT. If a person is not
3-62 the owner or operator of the computer, the person may not:
3-63 (1) induce the owner or operator of a computer in this
3-64 state to install a computer software component to the computer by
3-65 intentionally misrepresenting the extent to which the installation
3-66 is necessary for security or privacy reasons, to open or view text,
3-67 or to play a particular type of musical or other content; or
3-68 (2) copy and execute or provide for the copying and
3-69 execution of a computer software component to a computer in this

4-1 state in a deceptive manner with the intent of causing the owner or
4-2 operator of the computer to use the component in a manner that
4-3 violates this chapter.

4-4 Sec. 48.056. DECEPTIVE ACT OR OMISSION. For purposes of
4-5 this chapter, a person is considered to have acted through
4-6 intentionally deceptive means if the person, with the intent to
4-7 deceive an owner or operator of a computer:

4-8 (1) intentionally makes a materially false or
4-9 fraudulent statement;

4-10 (2) intentionally makes a statement or uses a
4-11 description that omits or misrepresents material information; or

4-12 (3) intentionally and materially fails to provide to
4-13 the owner or operator any notice regarding the installation or
4-14 execution of computer software.

4-15 Sec. 48.057. TRANSMISSION OF COMPUTER SOFTWARE. For
4-16 purposes of this chapter, a person is considered to have
4-17 transmitted computer software to a computer if the person
4-18 transfers, sends, or makes available computer software, or a
4-19 component of the software, through:

4-20 (1) the Internet;

4-21 (2) a local area network of computers;

4-22 (3) other non-wire transmission;

4-23 (4) a disc or other data storage device; or

4-24 (5) any other medium.

4-25 [Sections 48.058-48.100 reserved for expansion]

4-26 SUBCHAPTER C. CIVIL REMEDIES

4-27 Sec. 48.101. CIVIL RELIEF. (a) The following persons may
4-28 bring a civil action against a person who violates this chapter:

4-29 (1) a provider of computer software who is adversely
4-30 affected by the violation;

4-31 (2) an owner of a web page or trademark who is
4-32 adversely affected by the violation; or

4-33 (3) the attorney general.

4-34 (b) In addition to any other remedy provided by law, a
4-35 person bringing an action under this section may:

4-36 (1) seek injunctive relief to restrain the violator
4-37 from continuing the violation;

4-38 (2) recover damages in an amount equal to the greater
4-39 of:

4-40 (A) actual damages arising from the violation; or

4-41 (B) \$100,000 for each violation of the same

4-42 nature; or

4-43 (3) both seek injunctive relief and recover damages as
4-44 provided by this subsection.

4-45 (c) The court may increase an award of actual damages in an
4-46 action brought under this section to an amount not to exceed three
4-47 times the actual damages sustained if the court finds that the
4-48 violations have occurred with a frequency as to constitute a
4-49 pattern or practice.

4-50 (d) A plaintiff who prevails in an action filed under this
4-51 section is entitled to recover reasonable attorney's fees and court
4-52 costs.

4-53 (e) Each separate violation of this chapter is an actionable
4-54 violation.

4-55 (f) For purposes of this section, violations are of the same
4-56 nature if the violations consist of the same course of conduct or
4-57 action, regardless of the number of times the conduct or act
4-58 occurred.

4-59 SECTION 2. This Act takes effect September 1, 2005.

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