
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 496 Session of
2013

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MATZIE, FEBRUARY 4, 2013

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 4, 2013

AN ACT

1 Providing for the protection of consumers from having spyware
2 deceptively installed on wireless communication devices and
3 for criminal enforcement.

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14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Short title.

1 This act shall be known and may be cited as the Consumer
2 Protection Against Spyware on Wireless Devices Act.

3 Section 2. Definitions.

4 The following words and phrases when used in this act shall
5 have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Authorized user." With respect to a wireless communication
8 device, a person who is the account subscriber or is authorized
9 by the account subscriber to use the device.

10 "Deceptive" or "deception." The term includes:

11 (1) An intentionally and materially false or fraudulent
12 statement.

13 (2) A statement or description that intentionally omits
14 or misrepresents material information in order to deceive the
15 authorized user.

16 (3) An intentional and material failure to provide any
17 notice to an authorized user regarding the download or
18 installation of software in order to deceive the authorized
19 user.

20 "Download." Transfer, transmit, install or otherwise cause
21 software to be received and stored on a wireless communication
22 device.

23 "Electronic communication." As defined in 18 Pa.C.S. § 5702
24 (relating to definitions).

25 "Execute." With respect to software, the performance of the
26 functions or the carrying out of the instructions of the
27 software.

28 "Internet." The global information system that is logically
29 linked together by a globally unique address space based on the
30 Internet Protocol (IP), or its subsequent extensions, and that

1 is able to support communications using the Transmission Control
2 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent
3 extensions, or other IP-compatible protocols, and that provides,
4 uses or makes accessible, either publicly or privately, high-
5 level services layered on the communications and related
6 infrastructure described in this act.

7 "Message." A graphical, electronic or text communication
8 presented to an authorized user other than communications
9 originated and sent by the operating system or communications
10 presented for any of the purposes described in section 6.

11 "Oral communication." As defined in 18 Pa.C.S. § 5702
12 (relating to definitions).

13 "Person." Any individual, partnership, corporation, limited
14 liability company or other organization, or any combination
15 thereof.

16 "Software." A sequence of instructions or data, written in
17 any programming language, executed on a wireless communication
18 device.

19 "Spyware." Any software designed to be downloaded on a
20 wireless communication device and permit remote monitoring of
21 oral communications, text messages, electronic communications
22 usage patterns, photographic or video functionality or the
23 location of the user of the device on which it has been
24 installed.

25 "Wireless communication." Any oral, electronic text or
26 graphic communication or message sent or received by the
27 authorized user of a wireless communication device.

28 "Wireless communication device." Any cellular device or
29 handset capable of:

30 (1) Sending or receiving, in analog or digital format,

oral text or electronic communications and messaging.

(2) Connecting to the Internet.

(3) Taking, sending and receiving photographs or video.

"Wireless communications service provider." An entity providing wireless communications networks or services that enable users to send and receive oral, electronic text or graphic communications; access the Internet; and download applications and software directly to a wireless communication device.

Section 3. Spyware prohibition.

Subject to the nonapplicability provisions of section 5, no person shall cause spyware to be installed or downloaded onto a wireless communication device without the express consent of the authorized user,

Section 4. Misrepresentation and deception.

A person or entity who is not an authorized user shall not induce an authorized user to install spyware onto a wireless communication device by misrepresenting that installing software is necessary for security or privacy reasons or in order to open, view or play a particular type of content, or commit any other misrepresenting or deceptive act with regard to a wireless communication device of an authorized user in this Commonwealth.

Section 5. Nonapplicability.

Nothing in this act shall:

(1) Apply to installation of any software or hardware on a wireless communication device by a wireless communications device manufacturer or wireless communications service provider, provided that the software or hardware is:

(i) Necessary or incident to the provision of wireless communications service or the equipment or

1 facilities used, in the ordinary course of business, to
2 provide wireless communications service.

3 (ii) Used, pursuant to court order or exigent
4 circumstances, to assist an investigative or law
5 enforcement officer or locate persons suspected of
6 involvement in criminal activities.

7 (iii) Used by police and emergency communications
8 systems to locate any person calling 911 or a police
9 department, fire department or county emergency center.

10 (2) Apply to monitoring of or interaction with a user's
11 wireless communication device, including the Internet or
12 other network connection or service, by a wireless
13 communications service provider for the purpose of network
14 security, diagnostics, technical support, repair, authorized
15 updates of software, network management or maintenance or any
16 other administrative, commercial, technical or business
17 purpose.

18 (3) Apply to monitoring of or interaction with a user's
19 wireless communication device, including the Internet or
20 other network connection or service, by a wireless
21 communications service provider for the purpose of detecting
22 or preventing unauthorized use, fraud or other illegal
23 activity in connection with a network, service or computer
24 software, including scanning for and removing spyware
25 proscribed under this act.

26 (4) Impact or limit the rights of providers of
27 electronic communications under 18 U.S.C. § 2511 (relating to
28 interception and disclosure of wire, oral, or electronic
29 communications prohibited), 18 U.S.C. § 2701 et seq.

30 (relating to stored wire and electronic communications and

1 transactional records access), 18 U.S.C. § 3117 (relating to
2 mobile tracking devices), 18 U.S.C. § 3121 et seq. (relating
3 to pen registers and trap and trace devices), or 18 Pa.C.S. §
4 5704 (relating to exceptions to prohibition of interception
5 and disclosure of communications).

6 Section 6. Criminal enforcement.

7 (a) District attorneys.--The district attorneys of the
8 several counties shall have authority to investigate and to
9 institute criminal proceedings for any violations of this act.

10 (b) Attorney General.--

11 (1) In addition to the authority conferred upon the
12 Attorney General under the act of October 15, 1980 (P.L.950,
13 No.164), known as the Commonwealth Attorneys Act, the
14 Attorney General shall have the authority to investigate and
15 institute criminal proceedings for any violation of this act.

16 (2) A person charged with a violation of this act by the
17 Attorney General shall not have standing to challenge the
18 authority of the Attorney General to investigate or prosecute
19 the case and, if a challenge is made, the challenge shall be
20 dismissed and no relief shall be available in the courts of
21 this Commonwealth to the person making the challenge.

22 (c) Proceedings against persons outside Commonwealth.--In
23 addition to powers conferred upon district attorneys and the
24 Attorney General under subsections (a) and (b), district
25 attorneys and the Attorney General shall have the authority to
26 investigate and initiate criminal proceedings against persons
27 for violations of this act in accordance with 18 Pa.C.S. § 102
28 (relating to territorial applicability).

29 Section 7. Penalty.

30 Any person that violates section 3 or 4 commits a felony of

1 the second degree and shall, upon conviction, be sentenced to
2 imprisonment for not more than ten years or to pay a fine,
3 notwithstanding 18 Pa.C.S. § 1101 (relating to fines), of not
4 more than \$25,000, or both.

5 Section 8. Construction.

6 The provisions of this act shall not be construed to limit
7 the jurisdiction and authority of the Office of Attorney
8 General, including the jurisdiction and authority granted
9 pursuant to the act of October 15, 1980 (P.L.950, No.164), known
10 as the Commonwealth Attorneys Act, and the act of December 17,
11 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
12 Consumer Protection Law.

13 Section 9. Effective date.

14 This act shall take effect in 60 days.