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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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INTRODUCED BY BOBACK, MATZIE, MILLARD, V. BROWN AND D. COSTA,  
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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 12, 2017

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AN ACT

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

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "Authorized user." With respect to a wireless communication  
14 device, a person who is the account subscriber or is authorized  
15 by the account subscriber to use the device.

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

17 (1) An intentionally and materially false or fraudulent  
18 statement.

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

4           (3) An intentional and material failure to provide any  
5 notice to an authorized user regarding the download or  
6 installation of software in order to deceive the authorized  
7 user.

8       "Download." Transfer, transmit, install or otherwise cause  
9 software to be received and stored on a wireless communication  
10 device.

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

13       "Execute." With respect to software, the performance of the  
14 functions or the carrying out of the instructions of the  
15 software.

16       "Internet." The global information system that is logically  
17 linked together by a globally unique address space based on the  
18 Internet Protocol (IP), or its subsequent extensions, and that  
19 is able to support communications using the Transmission Control  
20 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent  
21 extensions, or other IP-compatible protocols, and that provides,  
22 uses or makes accessible, either publicly or privately, high-  
23 level services layered on the communications and related  
24 infrastructure described in this act.

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

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

1 "Person." Any individual, partnership, corporation, limited  
2 liability company or other organization, or any combination  
3 thereof.

4 "Software." A sequence of instructions or data, written in  
5 any programming language, executed on a wireless communication  
6 device.

7 "Spyware." Any software designed to be downloaded on a  
8 wireless communication device and permit remote monitoring of  
9 oral communications, text messages, electronic communications  
10 usage patterns, photographic or video functionality or the  
11 location of the user of the device on which it has been  
12 installed.

13 "Wireless communication." Any oral, electronic text or  
14 graphic communication or message sent or received by the  
15 authorized user of a wireless communication device.

16 "Wireless communication device." Any cellular device or  
17 handset capable of:

18 (1) Sending or receiving, in analog or digital format,  
19 oral text or electronic communications and messaging.

20 (2) Connecting to the Internet.

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

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

28 Section 3. Spyware prohibition.

29 Subject to the nonapplicability provisions of section 5, no  
30 person shall cause spyware to be installed or downloaded onto a

1 wireless communication device without the express consent of the  
2 authorized user,

3 Section 4. Misrepresentation and deception.

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

11 Section 5. Nonapplicability.

12 Nothing in this act shall:

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

17 (i) Necessary or incident to the provision of  
18 wireless communications service or the equipment or  
19 facilities used, in the ordinary course of business, to  
20 provide wireless communications service.

21 (ii) Used, pursuant to court order or exigent  
22 circumstances, to assist an investigative or law  
23 enforcement officer or locate persons suspected of  
24 involvement in criminal activities.

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

28 (2) Apply to monitoring of or interaction with a user's  
29 wireless communication device, including the Internet or  
30 other network connection or service, by a wireless

1 communications service provider for the purpose of network  
2 security, diagnostics, technical support, repair, authorized  
3 updates of software, network management or maintenance or any  
4 other administrative, commercial, technical or business  
5 purpose.

6 (3) Apply to monitoring of or interaction with a user's  
7 wireless communication device, including the Internet or  
8 other network connection or service, by a wireless  
9 communications service provider for the purpose of detecting  
10 or preventing unauthorized use, fraud or other illegal  
11 activity in connection with a network, service or computer  
12 software, including scanning for and removing spyware  
13 proscribed under this act.

14 (4) Impact or limit the rights of providers of  
15 electronic communications under 18 U.S.C. § 2511 (relating to  
16 interception and disclosure of wire, oral, or electronic  
17 communications prohibited), 18 U.S.C. Ch. 121 (relating to  
18 stored wire and electronic communications and transactional  
19 records access), 18 U.S.C. § 3117 (relating to mobile  
20 tracking devices), 18 U.S.C. Ch. 206 (relating to pen  
21 registers and trap and trace devices), or 18 Pa.C.S. § 5704  
22 (relating to exceptions to prohibition of interception and  
23 disclosure of communications).

24 Section 6. Criminal enforcement.

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

28 (b) Attorney General.--

29 (1) In addition to the authority conferred upon the  
30 Attorney General under the act of October 15, 1980 (P.L.950,

1 No.164), known as the Commonwealth Attorneys Act, the  
2 Attorney General shall have the authority to investigate and  
3 institute criminal proceedings for any violation of this act.

4 (2) A person charged with a violation of this act by the  
5 Attorney General shall not have standing to challenge the  
6 authority of the Attorney General to investigate or prosecute  
7 the case and, if a challenge is made, the challenge shall be  
8 dismissed and no relief shall be available in the courts of  
9 this Commonwealth to the person making the challenge.

10 (c) Proceedings against persons outside Commonwealth.--In  
11 addition to powers conferred upon district attorneys and the  
12 Attorney General under subsections (a) and (b), district  
13 attorneys and the Attorney General shall have the authority to  
14 investigate and initiate criminal proceedings against persons  
15 for violations of this act in accordance with 18 Pa.C.S. § 102  
16 (relating to territorial applicability).

17 Section 7. Penalty.

18 Any person that violates section 3 or 4 commits a felony of  
19 the second degree and shall, upon conviction, be sentenced to  
20 imprisonment for not more than 10 years or to pay a fine,  
21 notwithstanding 18 Pa.C.S. § 1101 (relating to fines), of not  
22 more than \$25,000, or both.

23 Section 8. Construction.

24 The provisions of this act shall not be construed to limit  
25 the jurisdiction and authority of the Office of Attorney  
26 General, including the jurisdiction and authority granted  
27 pursuant to the act of October 15, 1980 (P.L.950, No.164), known  
28 as the Commonwealth Attorneys Act, and the act of December 17,  
29 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and  
30 Consumer Protection Law.

1 Section 9. Effective date.

2 This act shall take effect in 60 days.