

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1697 Session of
2005

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WASHINGTON, YOUNGBLOOD, ALLEN AND SIPTROTH, JUNE 13, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 6, 2005

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for the OFFENSE OF SELLING <—
3 OR FURNISHING LIQUOR OR MALT OR BREWED BEVERAGES TO MINORS
4 RESULTING IN INJURY OR DEATH, FOR protection of consumers
5 from having spyware deceptively installed on their computers
6 and for criminal and civil enforcement.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 ~~Section 1. Chapter 76 of Title 18 of the Pennsylvania~~ <—
10 ~~Consolidated Statutes is amended by adding a subchapter to read:~~

11 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED <—
12 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

13 § 6310.8. SELLING OR FURNISHING LIQUOR OR MALT OR BREWED
14 BEVERAGES TO MINORS RESULTING IN INJURY OR DEATH.

15 (A) BODILY INJURY.--A PERSON COMMITS A MISDEMEANOR OF THE
16 SECOND DEGREE IF THAT PERSON SELLS OR FURNISHES ANY LIQUOR OR
17 ANY MALT OR BREWED BEVERAGE TO A PERSON WHO IS UNDER 21 YEARS OF

1 AGE AND WHO SUFFERS OR CAUSES ANOTHER PERSON TO SUFFER BODILY
2 INJURY AS A RESULT OF INGESTING THAT LIQUOR OR MALT OR BREWED
3 BEVERAGE.

4 (B) SERIOUS BODILY INJURY.--A PERSON COMMITS A MISDEMEANOR
5 OF THE FIRST DEGREE IF THAT PERSON SELLS OR FURNISHES ANY LIQUOR
6 OR ANY MALT OR BREWED BEVERAGE TO A PERSON WHO IS UNDER 21 YEARS
7 OF AGE AND WHO SUFFERS OR CAUSES ANOTHER PERSON TO SUFFER
8 SERIOUS BODILY INJURY AS A RESULT OF INGESTING THAT LIQUOR OR
9 MALT OR BREWED BEVERAGE.

10 (C) DEATH.--A PERSON COMMITS A FELONY OF THE THIRD DEGREE IF
11 THAT PERSON SELLS OR FURNISHES ANY LIQUOR OR ANY MALT OR BREWED
12 BEVERAGE TO A PERSON WHO IS UNDER 21 YEARS OF AGE AND WHO DIES
13 OR CAUSES THE DEATH OF ANOTHER PERSON AS A RESULT OF INGESTING
14 THAT LIQUOR OR MALT OR BREWED BEVERAGE.

15 (D) EXCEPTION.--THE PROVISIONS OF THIS SECTION SHALL NOT
16 APPLY TO ANY RELIGIOUS SERVICE OR CEREMONY WHICH MAY BE
17 CONDUCTED IN A PRIVATE HOME OR A PLACE OF WORSHIP WHERE THE
18 AMOUNT OF WINE SERVED DOES NOT EXCEED THE AMOUNT REASONABLY,
19 CUSTOMARILY AND TRADITIONALLY REQUIRED AS AN INTEGRAL PART OF
20 THE SERVICE OR CEREMONY.

21 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
22 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
23 SUBSECTION:

24 "BODILY INJURY." AS DEFINED IN SECTION 2301 (RELATING TO
25 DEFINITIONS).

26 "SERIOUS BODILY INJURY." AS DEFINED IN SECTION 2301
27 (RELATING TO DEFINITIONS).

28 SECTION 2. CHAPTER 76 OF TITLE 18 IS AMENDED BY ADDING A
29 SUBCHAPTER TO READ:

30 SUBCHAPTER F

SPYWARE

Sec.

7671. Scope.

7672. Definitions.

7673. Computer spyware prohibitions.

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§ 7671. Scope.

This subchapter deals with the consumer protection against computer spyware.

§ 7672. Definitions.

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

"Authorized user." With respect to a computer, a person who owns or is authorized by the owner or lessee to use the computer.

"Cause to be copied." To distribute, transfer or procure the copying of computer software or any component thereof. The term shall not include the following:

(1) Transmission, routing, provision of intermediate temporary storage or caching of software.

(2) A storage or hosting medium, such as a compact disc, Internet website or computer server, through which the software was distributed by a third party.

(3) An information location tool, such as a directory,

1 index, reference, pointer or hypertext link, through which
2 the user of the computer located the software.

3 "Communications provider." Entity providing communications
4 networks or services that enable consumers to access the
5 Internet or destinations on the public switched telephone
6 network via a computer modem. This term shall include cable
7 service providers that also provide telephone services and
8 providers of Voice over Internet Protocol services.

9 "Computer software." A sequence of instructions written in
10 any programming language that is executed on a computer. The
11 term shall not include a text or data file, an Internet website
12 or a data component of an Internet website that is not
13 executable independently of the Internet website.

14 "Computer virus." A computer program or other set of
15 instructions that is designed to degrade the performance of or
16 disable a computer or computer network and is designed to have
17 the ability to replicate itself on other computers or computer
18 networks without the authorization of the owners of those
19 computers or computer networks.

20 "Damage." Any material impairment to the integrity,
21 functionality or availability of data, software, a computer, a
22 system or information.

23 "Deceptive" or "deception." Includes:

24 (1) An intentionally and materially false or fraudulent
25 statement.

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

29 (3) An intentional and material failure to provide any
30 notice to an authorized user regarding the download or

1 installation of software in order to deceive the authorized
2 user.

3 "Execute." With respect to computer software, the
4 performance of the functions or the carrying out of the
5 instructions of the computer software.

6 "Internet." The global information system that is logically
7 linked together by a globally unique address space based on the
8 Internet Protocol (IP), or its subsequent extensions, and that
9 is able to support communications using the Transmission Control
10 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent
11 extensions, or other IP-compatible protocols, and that provides,
12 uses or makes accessible, either publicly or privately, high-
13 level services layered on the communications and related
14 infrastructure described in this subchapter.

15 "Message." A graphical or text communication presented to an
16 authorized user of a computer other than communications
17 originated and sent by the computer's operating system or
18 communications presented for any of the purposes described in
19 section 7676 (relating to nonapplicability).

20 "Person." Any individual, partnership, corporation, limited
21 liability company or other organization or any combination
22 thereof.

23 "Personally identifiable information." The term shall
24 include any of the following:

25 (1) First name or first initial in combination with last
26 name.

27 (2) Credit or debit card numbers or other financial
28 account numbers.

29 (3) A password or personal identification number
30 required to access an identified financial account other than

1 a password, personal identification number or other
2 identification number transmitted by an authorized user to
3 the issuer of the account or its agent.

4 (4) Social Security number.

5 (5) Any of the following information in a form that
6 personally identifies an authorized user:

7 (i) Account balances.

8 (ii) Overdraft history.

9 (iii) Payment history.

10 (iv) A history of Internet websites visited.

11 (v) Home address.

12 (vi) Work address.

13 (vii) A record of a purchase or purchases.

14 "Procure the copying." To pay or provide other consideration
15 to, or induce another person to cause software to be copied onto
16 a computer.

17 § 7673. Computer spyware prohibitions.

18 A person or entity that is not an authorized user shall not,
19 with actual knowledge OR with conscious avoidance of actual <—
20 knowledge, ~~or~~ willfully cause computer software to be copied or <—
21 procure the copying onto the computer of an authorized user in
22 this Commonwealth and use the software to do any of the
23 following acts or any other acts deemed to be deceptive:

24 (1) Modify through deceptive means any of the following
25 settings related to the computer's access to or use of the
26 Internet:

27 (i) The page that appears when an authorized user
28 launches an Internet browser or similar software program
29 used to access and navigate the Internet.

30 (ii) The default provider or Internet website proxy

1 that the authorized user uses to access or search the
2 Internet.

3 (iii) The authorized user's list of bookmarks used
4 to access Internet website pages.

5 (2) Collect through deceptive means personally
6 identifiable information that meets any of the following
7 criteria:

8 (i) It is collected through the use of a keystroke-
9 logging function that records all keystrokes made by an
10 authorized user who uses the computer and transfers that
11 information from the computer to another person.

12 (ii) It includes all or substantially all of the
13 Internet websites visited by an authorized user, other
14 than Internet websites of the provider of the software,
15 if the computer software was installed in a manner
16 designed to conceal from all authorized users of the
17 computer the fact that the software is being installed.

18 (iii) It is a data element described in paragraph
19 (2), (3), (4) or (5)(i) or (ii) of the definition of
20 "personally identifiable information" that is extracted
21 from the authorized user's computer hard drive for a
22 purpose wholly unrelated to any of the purposes of the
23 software or service described to an authorized user.

24 (3) Prevent, without the authorization of an authorized
25 user, through deceptive means an authorized user's reasonable
26 efforts to block the installation of or to disable software
27 by causing software that the authorized user has properly
28 removed or disabled to automatically reinstall or reactivate
29 on the computer without the authorization of an authorized
30 user.

1 (4) Misrepresent that software will be uninstalled or
2 disabled by an authorized user's action with knowledge that
3 the software will not be so uninstalled or disabled.

4 (5) Through deceptive means, remove, disable or render
5 inoperative security, antispyware or antivirus software
6 installed on the computer.

7 § 7674. Control or modification.

8 A person or entity that is not an authorized user shall not,
9 with actual knowledge, with conscious avoidance of actual
10 knowledge, or willfully cause computer software to be copied or
11 procure the copying onto the computer of an authorized user in
12 this Commonwealth and use the software to do any of the
13 following acts or any other acts deemed to be deceptive:

14 (1) Take control of the authorized user's computer by
15 doing any of the following:

16 (i) Transmitting or relaying commercial electronic
17 mail or a computer virus from the authorized user's
18 computer, where the transmission or relaying is initiated
19 by a person other than the authorized user and without
20 the authorization of an authorized user.

21 (ii) Accessing or using the authorized user's modem
22 or Internet service for the purpose of causing damage to
23 the authorized user's computer or of causing an
24 authorized user to incur financial charges for a service
25 that is not authorized by an authorized user.

26 (iii) Using the authorized user's computer as part
27 of an activity performed by a group of computers for the
28 purpose of causing damage to another computer, including,
29 but not limited to, launching a denial of service attack.

30 (iv) Opening a series of stand-alone messages in the

1 authorized user's computer without the authorization of
2 an authorized user and with knowledge that a reasonable
3 computer user cannot close the advertisements without
4 turning off the computer or closing the Internet
5 application.

6 (2) Modify any of the following settings related to the
7 computer's access to or use of the Internet:

8 (i) An authorized user's security or other settings
9 that protect information about the authorized user for
10 the purpose of stealing personal information of an
11 authorized user.

12 (ii) The security settings of the computer for the
13 purpose of causing damage to one or more computers.

14 (3) Prevent, without the authorization of an authorized
15 user, an authorized user's reasonable efforts to block the
16 installation of or to disable software by doing any of the
17 following:

18 (i) Presenting the authorized user with an option to
19 decline installation of software with knowledge that,
20 when the option is selected by the authorized user, the
21 installation nevertheless proceeds.

22 (ii) Falsely representing that software has been
23 disabled.

24 (iii) Requiring in a deceptive manner the user to
25 access the Internet to remove the software with knowledge
26 or reckless disregard of the fact that the software
27 frequently operates in a manner that prevents the user
28 from accessing the Internet.

29 (iv) Changing the name, location or other
30 designation information of the software for the purpose

1 of preventing an authorized user from locating the
2 software to remove it.

3 (v) Using randomized or deceptive file names,
4 directory folders, formats or registry entries for the
5 purpose of avoiding detection and removal of the software
6 by an authorized user.

7 (vi) Causing the installation of software in a
8 particular computer directory or computer memory for the
9 purpose of evading authorized users' attempts to remove
10 the software from the computer.

11 (vii) Requiring, without the authority of the owner
12 of the computer, that an authorized user obtain a special
13 code or download software from a third party to uninstall
14 the software.

15 § 7675. Misrepresentation and deception.

16 A person or entity who is not an authorized user shall not do
17 any of the following or any other misrepresenting and deceptive
18 acts with regard to the computer of an authorized user in this
19 Commonwealth:

20 (1) Induce an authorized user to install a software
21 component onto the computer by misrepresenting that
22 installing software is necessary for security or privacy
23 reasons or in order to open, view or play a particular type
24 of content.

25 (2) Causing the copying and execution on the computer of
26 a computer software component with the intent of causing an
27 authorized user to use the component in a way that violates
28 any other provision of this section.

29 § 7676. Nonapplicability.

30 (1) Nothing in section 7674 (relating to control or

modification) or 7675 (relating to misrepresentation and deception) shall apply to any monitoring of or interaction with a user's Internet or other network connection or service, or a protected computer, by a cable operator, computer hardware or software provider or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, authorized updates of software or system firmware, network management or maintenance, authorized remote system management or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service or computer software, including scanning for and removing software proscribed under this subchapter.

(2) Nothing in this subchapter shall limit the rights of providers of wire and electronic communications under 18 U.S.C. § 2511 (relating to interception and disclosure of wire, oral, or electronic communications prohibited).

§ 7677. Criminal enforcement.

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

(b) Attorney General.--In addition to the authority conferred upon the Attorney General under the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and institute criminal proceedings for any violation of this subchapter. A person charged with a violation of this subchapter by the Attorney General shall not have standing to challenge the authority of the Attorney General to investigate or prosecute

1 the case, and, if any such challenge is made, the challenge
2 shall be dismissed and no relief shall be available in the
3 courts of this Commonwealth to the person making the challenge.

4 (c) Proceedings against persons outside Commonwealth.--In
5 addition to the powers conferred upon the district attorneys and
6 the Attorney General in subsections (a) and (b), district
7 attorneys and the Attorney General shall have the authority to
8 investigate and initiate criminal proceedings against persons
9 for violations of this act in accordance with section 102
10 (relating to territorial applicability).

11 § 7678. Penalty.

12 Any person that violates the provisions of sections 7673(2)
13 (relating to computer spyware prohibitions) and 7574(1)(i), (ii)
14 and (iii) and (2)(i) and (ii) (relating to control or
15 modification) shall be guilty of a felony of the second degree
16 and, upon conviction thereof, shall be sentenced to imprisonment
17 for not less than one nor more than ten years or a fine,
18 notwithstanding section 1101 (relating to fines), of not more
19 than \$25,000, or both.

20 § 7679. Civil relief.

21 (a) General rule.--Subject to the limitation set forth in
22 subsection (g), the following persons may bring a civil action
23 against a person who violates this act:

24 (1) A provider of computer software who is adversely
25 affected by the violation.

26 (2) An Internet service provider who is adversely
27 affected by the violation.

28 (3) A trademark owner whose trademark is used without
29 the authorization of the owner to deceive users in the course
30 of any of the deceptive practices prohibited by this section.

1 (4) The Attorney General.

2 (b) Additional remedies.--In addition to any other remedy
3 provided by law, a permitted person bringing an action under
4 this section may:

5 (1) Seek injunctive relief to restrain the violator from
6 continuing the violation.

7 (2) Recover damages in an amount equal to the greater
8 of:

9 (i) Actual damages arising from the violation.

10 (ii) Up to \$100,000 for each violation, as the court
11 considers just.

12 (3) Seek both injunctive relief and recovery of damages
13 as provided by this subsection.

14 (c) Increase by court.--The court may increase an award of
15 actual damages in an action brought under this section to an
16 amount not to exceed three times the actual damages sustained if
17 the court finds that the violations have occurred with a
18 frequency with respect to a group of victims as to constitute a
19 pattern or practice.

20 (d) Fees and costs.--A plaintiff who prevails in an action
21 filed under this section is entitled to recover reasonable
22 attorney fees and court costs.

23 (e) Communications provider relief.--In the case of a
24 violation of section 7674(1)(ii) (relating to control or
25 modification) that causes a communications provider to incur
26 costs for the origination, transport or termination of a call
27 triggered using the modem of a customer of the communications
28 provider as a result of a violation, the communications provider
29 may bring a civil action against the violator to recover any or
30 all of the following:

1 (1) The charges the carrier is obligated to pay to
2 another carrier or to an information service provider as a
3 result of the violation, including, but not limited to,
4 charges for the origination, transport or termination of the
5 call.

6 (2) Costs of handling customer inquiries or complaints
7 with respect to amounts billed for calls.

8 (3) Costs and a reasonable attorney fee.

9 (4) An order to enjoin the violation.

10 (f) Multiple violations.--For purposes of a civil action
11 under this section, any single action or conduct that violates
12 more than one provision of this subchapter shall be considered
13 multiple violations based on the number of such paragraphs
14 violated.

15 (g) Unfair trade practice.--A violation of this subchapter
16 shall be deemed to be an unfair or deceptive act or practice in
17 violation of the act of December 17, 1968 (P.L.1224, No.387),
18 known as the Unfair Trade Practices and Consumer Protection Law.
19 The Office of Attorney General shall have exclusive authority to
20 bring an action under the Unfair Trade Practices and Consumer
21 Protection Law for a violation of that act.

22 Section ~~2~~ 3. This act shall take effect in 60 days.

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