

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 755 Session of  
2007

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YOUNGBLOOD, HESS AND MURT, MARCH 19, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for protection of consumers  
3 from having spyware deceptively installed on their computers  
4 and for criminal and civil enforcement.

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

7 Section 1. Chapter 76 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER F

10 SPYWARE

11 Sec.

12 7671. Scope of subchapter.

13 7672. Definitions.

14 7673. Computer spyware prohibitions.

15 7674. Control or modification.

16 7675. Misrepresentation and deception.

1 7676. Nonapplicability.

2 7677. Criminal enforcement.

3 7678. Penalty.

4 7679. Civil relief.

5 § 7671. Scope of subchapter.

6 This subchapter deals with consumer protection against  
7 computer spyware.

8 § 7672. Definitions.

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

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

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

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

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

23 (3) An information location tool, such as a directory,  
24 index, reference, pointer or hypertext link, through which  
25 the user of the computer located the software.

26 "Communications provider." An entity that provides  
27 communications networks or services that enable consumers to  
28 access the Internet or destinations on the public switched  
29 telephone network via a computer modem. This term shall include  
30 cable service providers that also provide telephone services and

providers of Voice over Internet Protocol services.

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

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

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

"Deceptive" or "deception." Includes:

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

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

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

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

"Internet." The global information system that is logically linked together by a globally unique address space based on the

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

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

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

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

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

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

(3) A password or personal identification number required to access an identified financial account other than a password, personal identification number or other identification number transmitted by an authorized user to the issuer of the account or its agent.

(4) Social Security number.

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

(i) Account balances.

1           (ii) Overdraft history.

2           (iii) Payment history.

3           (iv) A history of Internet websites visited.

4           (v) Home address.

5           (vi) Work address.

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

7       "Procure the copying." To pay or provide other consideration  
8 to, or induce another person to cause software to be copied onto  
9 a computer.

10 § 7673. Computer spyware prohibitions.

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

17       (1) Modify through deceptive means any of the following  
18 settings related to the computer's access to or use of the  
19 Internet:

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

23           (ii) The default provider or Internet website proxy  
24 that the authorized user uses to access or search the  
25 Internet.

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

28       (2) Collect through deceptive means personally  
29 identifiable information that meets any of the following  
30 criteria:

1           (i) Is collected through the use of a keystroke-  
2           logging function that records all keystrokes made by an  
3           authorized user who uses the computer and transfers that  
4           information from the computer to another person.

5           (ii) Includes all or substantially all of the  
6           Internet websites visited by an authorized user, other  
7           than Internet websites of the provider of the software,  
8           if the computer software was installed in a manner  
9           designed to conceal from all authorized users of the  
10           computer the fact that the software is being installed.

11           (iii) Is a data element described in paragraph (2),  
12           (3), (4) or (5)(i) or (ii) of the definition of  
13           "personally identifiable information" that is extracted  
14           from the authorized user's computer hard drive for a  
15           purpose wholly unrelated to any of the purposes of the  
16           software or service described to an authorized user.

17           (3) Prevent, without the authorization of an authorized  
18           user, through deceptive means an authorized user's reasonable  
19           efforts to block the installation of or to disable software  
20           by causing software that the authorized user has properly  
21           removed or disabled to automatically reinstall or reactivate  
22           on the computer without the authorization of an authorized  
23           user.

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

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

30   § 7674. Control or modification.

1     A person or entity that is not an authorized user shall not,  
2     with actual knowledge, with conscious avoidance of actual  
3     knowledge, or willfully cause computer software to be copied or  
4     procure the copying onto the computer of an authorized user in  
5     this Commonwealth and use the software to do any of the  
6     following acts or any other acts deemed to be deceptive:

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

9                     (i) Transmitting or relaying commercial electronic  
10                    mail or a computer virus from the authorized user's  
11                    computer, where the transmission or relaying is initiated  
12                    by a person other than the authorized user and without  
13                    the authorization of an authorized user.

14                    (ii) Accessing or using the authorized user's modem  
15                    or Internet service for the purpose of causing damage to  
16                    the authorized user's computer or of causing an  
17                    authorized user to incur financial charges for a service  
18                    that is not authorized by an authorized user.

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

23                    (iv) Opening a series of stand-alone messages in the  
24                    authorized user's computer without the authorization of  
25                    an authorized user and with knowledge that a reasonable  
26                    computer user cannot close the advertisements without  
27                    turning off the computer or closing the Internet  
28                    application.

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

1           (i) An authorized user's security or other settings  
2           that protect information about the authorized user for  
3           the purpose of stealing personal information of an  
4           authorized user.

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

7           (3) Prevent, without the authorization of an authorized  
8           user, an authorized user's reasonable efforts to block the  
9           installation of or to disable software by doing any of the  
10          following:

11          (i) Presenting the authorized user with an option to  
12          decline installation of software with knowledge that,  
13          when the option is selected by the authorized user, the  
14          installation nevertheless proceeds.

15          (ii) Falsely representing that software has been  
16          disabled.

17          (iii) Requiring in a deceptive manner the user to  
18          access the Internet to remove the software with knowledge  
19          or reckless disregard of the fact that the software  
20          frequently operates in a manner that prevents the user  
21          from accessing the Internet.

22          (iv) Changing the name, location or other  
23          designation information of the software for the purpose  
24          of preventing an authorized user from locating the  
25          software to remove it.

26          (v) Using randomized or deceptive file names,  
27          directory folders, formats or registry entries for the  
28          purpose of avoiding detection and removal of the software  
29          by an authorized user.

30          (vi) Causing the installation of software in a



1 particular computer directory or computer memory for the  
2 purpose of evading authorized users' attempts to remove  
3 the software from the computer.

4 (vii) Requiring, without the authority of the owner  
5 of the computer, that an authorized user obtain a special  
6 code or download software from a third party to uninstall  
7 the software.

8 § 7675. Misrepresentation and deception.

9 A person or entity who is not an authorized user shall not do  
10 any of the following or any other misrepresenting and deceptive  
11 acts with regard to the computer of an authorized user in this  
12 Commonwealth:

13 (1) Induce an authorized user to install a software  
14 component onto the computer by misrepresenting that  
15 installing software is necessary for security or privacy  
16 reasons or in order to open, view or play a particular type  
17 of content.

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

22 § 7676. Nonapplicability.

23 (1) Nothing in section 7674 (relating to control or  
24 modification) or 7675 (relating to misrepresentation and  
25 deception) shall apply to any monitoring of or interaction  
26 with a user's Internet or other network connection or  
27 service, or a protected computer, by a cable operator,  
28 computer hardware or software provider or provider of  
29 information service or interactive computer service for  
30 network or computer security purposes, diagnostics, technical

1 support, repair, authorized updates of software or system  
2 firmware, network management or maintenance, authorized  
3 remote system management or detection or prevention of the  
4 unauthorized use of or fraudulent or other illegal activities  
5 in connection with a network, service or computer software,  
6 including scanning for and removing software proscribed under  
7 this subchapter.

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

12 § 7677. Criminal enforcement.

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

16 (b) Attorney General.--In addition to the authority  
17 conferred upon the Attorney General under the act of October 15,  
18 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act,  
19 the Attorney General shall have the authority to investigate and  
20 institute criminal proceedings for any violation of this  
21 subchapter. A person charged with a violation of this subchapter  
22 by the Attorney General shall not have standing to challenge the  
23 authority of the Attorney General to investigate or prosecute  
24 the case, and, if any such challenge is made, the challenge  
25 shall be dismissed and no relief shall be available in the  
26 courts of this Commonwealth to the person making the challenge.

27 (c) Proceedings against persons outside Commonwealth.--In  
28 addition to the powers conferred upon the district attorneys and  
29 the Attorney General in subsections (a) and (b), district  
30 attorneys and the Attorney General shall have the authority to

investigate and initiate criminal proceedings against persons  
for violations of this act in accordance with section 102  
(relating to territorial applicability).

§ 7678. Penalty.

Any person that violates the provisions of sections 7673(2)  
(relating to computer spyware prohibitions) and 7674(1)(i), (ii)  
and (iii) and (2)(i) and (ii) (relating to control or  
modification) shall be guilty of a felony of the second degree  
and, upon conviction thereof, shall be sentenced to imprisonment  
for not less than one nor more than ten years or a fine,  
notwithstanding section 1101 (relating to fines), of not more  
than \$25,000, or both.

§ 7679. Civil relief.

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

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

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

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

(4) The Attorney General.

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

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

(2) Recover damages in an amount equal to the greater

of:

(i) Actual damages arising from the violation.

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

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

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

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

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

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

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

1           (3) Costs and a reasonable attorney fee.

2           (4) An order to enjoin the violation.

3           (f) Multiple violations.--For purposes of a civil action  
4 under this section, any single action or conduct that violates  
5 more than one provision of this subchapter shall be considered  
6 multiple violations based on the number of such paragraphs  
7 violated.

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

15           Section 2. This act shall take effect in 60 days.